

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	20-CR-00213(KAM)
	:	
	:	
-against-	:	United States Courthouse
	:	Brooklyn, New York
	:	
	:	January 25, 2023
QUANDEL SMOTHERS,	:	9:00 a.m.
	:	
Defendant.	:	

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TRANSCRIPT OF CRIMINAL CAUSE FOR JURY TRIAL
BEFORE THE HONORABLE KIYO A. MATSUMOTO
UNITED STATES SENIOR DISTRICT COURT JUDGE

A P P E A R A N C E S:

For the Government: BREON PEACE
United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201
BY: MATTHEW GALEOTTI, ESQ.
GENNY NGAI, ESQ.
JONATHAN SIEGEL, ESQ.
Assistant United States Attorneys

For the Defendant: PETER J. GUADAGNINO, ESQ.
30 Wall Street, 8th Floor
New York, NY 10005
BY: PETER J. GUADAGNINO, ESQ.

Court Reporter: Michele Lucchese, RPR, CRR,
Official Court Reporter
718-613-2272
E-mail: MLuccheseEDNY@gmail.com

Proceedings recorded by computerized stenography. Transcript
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1 (In open court.)

2 THE COURTROOM DEPUTY: Good morning, everyone.

3 This is criminal cause for trial, docket 20-CR-213,
4 USA versus Quandel Smothers.

5 Will the Government attorneys please state your
6 appearances, please.

7 MR. GALEOTTI: Yes, good morning, Your Honor.

8 For the Government, Assistant United States
9 Attorneys, Matthew Galeotti, Jenny Ngai, Jonathan Siegel,
10 joined by Paralegal Specialist Brittany Wissel and Special
11 Agent Steven Schiliro.

12 THE COURT: Good morning. Thank you.

13 THE COURTROOM DEPUTY: On behalf of Mr. Smothers.

14 MR. GUADAGNINO: Good morning, Your Honor.

15 Peter Guadagnino on behalf of Mr. Smothers. I have
16 my paralegal Isabella Montoya at the table.

17 THE COURT: Good morning.

18 I'm told he is on his way up. As soon as he appears
19 in the courtroom, we will get started. I don't know if there
20 are any preliminary matters we have to deal with, but I think
21 Mr. Smothers should be present in the courtroom if there is
22 anything of substance.

23 Did you have anything administrative or scheduling?

24 MR. GALEOTTI: I'm not sure if this counts. I mean,
25 we can talk about it now and put it back on the record. It is

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1 related to a report that the Government received this morning
2 from BOP.

3 THE COURT: All right. Has been Mr. Guadagnino
4 provided with a copy?

5 MR. GALEOTTI: Yes.

6 MR. GUADAGNINO: I have, Your Honor.

7 THE COURT: Okay.

8 MR. GALEOTTI: We can wait, Your Honor, for Mr.
9 Smothers.

10 THE COURT: Okay. Let's wait for him. Thank you.
11 (Pause.)

12 THE COURT: Mr. Galeotti, you can put this on the
13 record in front of the defendant, but what is it that you want
14 to do with this report?

15 MR. GALEOTTI: Two things, Your Honor: The first
16 is, one, just to let the Court know that there was a request
17 of BOP to move the defendant right now. We said that's not
18 possible given the trial.

19 THE COURT: Okay.

20 MR. GALEOTTI: We haven't gotten any pushback on
21 that right now. We don't expect to. We will handle that.
22 It's mostly for the Court's awareness.

23 The second is we may make a motion to introduce this
24 as evidence, both as direct evidence of the defendant's
25 involvement in the racketeering conspiracy; namely, because he

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1 is committing acts of violence to try to associate with his
2 co-defendants. So it is direct evidence of his involvement in
3 the racketeering enterprise.

4 And in addition to that, Your Honor, in the
5 alternative as 404(b) evidence, there will be testimony that
6 part of how the defendant achieved his status in Rikers Island
7 was through committing similar acts.

8 THE COURT: If and when the time comes you seek
9 admission, you will give Mr. Guadagnino plenty of time to
10 respond to any motion you may make.

11 MR. GALEOTTI: We spoke --

12 THE COURT: We are in the middle of the trial right
13 now. So we will discuss this further once Mr. Smothers is in
14 the courtroom. But I would want to get this resolved sooner
15 rather than later.

16 (Defendant present.)

17 THE COURT: Mr. Smothers has now joined us in the
18 courtroom.

19 I'm going to address a few procedural issues before
20 we bring the jury in to start to resume the trial.

21 Does the Government first want to be heard on the
22 document that you have provided?

23 MR. GALEOTTI: Yes, Your Honor.

24 So, if we could just put on the record that this
25 morning, unprompted, unsolicited, we received a report from

1 the Bureau of Prisons asking to move the defendant is to an
2 alternate location given that he has been involved in repeated
3 incidents of violence which have caused him to be in the
4 Special Housing Unit. We responded that given the defendant
5 is on trial that's not a possibility and at this point we are
6 not receiving pushback from the Bureau of Prisons for the time
7 being during the course of the trial.

8 The second reason we are raising this with the Court
9 is to, as we've discussed with defense counsel this morning
10 prior, just to make him ware that we may make this motion and
11 we are now letting the Court know we may make this motion,
12 that this document itself is not admissible. So at this time
13 what we are seeking to do is to see if there is admissible
14 evidence which would demonstrate what the conclusion is in the
15 last paragraph, which is that because the defendant is not
16 being allowed to being housed with his co-defendants in this
17 case, he is assaulting random inmates in response, which the
18 Government believes is direct evidence of the defendant's
19 involvement in the racketeering conspiracy. So, we don't know
20 whether we will get admissible evidence. But as a legal
21 issue, we could deal with that at any time the Court thinks
22 appropriate.

23 We're certainly not going to put anything in it
24 today, so we can deal with it at the Court's convenience, so
25 that counsel can oppose or however it is, make everybody aware

1 of this document both for the operational reasons and for a
2 potential motion.

3 THE COURT: All right. Thank you.

4 And as I've noted, this is a recently provided
5 document And if there is going to be motion practice on this,
6 I will schedule it on a very tight timeframe. So the sooner
7 the Government can make a decision as to what evidence it
8 seeks to glean from this document and admit at this trial, the
9 sooner the better.

10 MR. GALEOTTI: Yes, Your Honor.

11 THE COURT: I will also state that I have made now,
12 between myself and chambers, approximately four or five calls
13 since the trial started on Monday seeking to address the lack
14 of an evening meal for Mr. Smothers. It has been very
15 difficult to get ahold of anyone over there.

16 I had been reassured by an official Monday evening
17 that he would receive a sandwich upon his return to MDC and
18 evening. I'm told by Mr. Guadagnino that that did not occur
19 Monday or Tuesday.

20 I have left a message above the operational level
21 with one of the wardens, who is in a meeting, and I hope to
22 hear back from somebody with authority at the institution
23 regarding the lack of meals. So we are working on it. I have
24 tried to call the legal office several times. I have left
25 message and sometimes I don't even have the ability to leave a

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1 message because the phone rings and then cuts off.

2 I have made the warden aware of all these issues.

3 Mr. Guadagnino, I don't know if you want to be heard
4 on what we have discussed so far. If not, I will move on to
5 the next issue.

6 MR. GUADAGNINO: I spoke with Mr. Smothers just now
7 and he said that his bunkmate kind of saved half of his own
8 food to give to Mr. Smothers so that he could have something
9 to eat. Again, it is depriving the bunkmate of his own food.

10 THE COURT: I understand. The warden knows that I
11 consider this unacceptable.

12 MR. GUADAGNINO: Thank you.

13 THE COURT: And we will hope we don't have to
14 escalate this to other procedures.

15 What I would like to do then is address the defense
16 motion to dismiss Juror No. 7. I think we can all agree that
17 she was very emotionally upset. She did not ascribe her sense
18 of feeling queazy and like she was going to vomit to any
19 illness or to anything she ate. She said it was due to the
20 nature of the evidence that she has been hearing so far.

21 I have no doubt that she is emotionally upset. I
22 don't know whether she was crying or on the verge of tears.
23 But I think that she has expressed concerns about her ability
24 to focus on this case and to be fair and impartial. And
25 because of that, I'm going to exercise my discretion and

1 excuse Juror No. 7.

2 I will instruct her not to discuss this with any
3 other juror. I can bring her in here and do this in open
4 court. But that's my view of how I should resolve this issue.
5 If anyone has any other views, I'm happy to hear them.

6 I will note for the record that I have received and
7 read letters from the Government and Mr. Guadagnino. The
8 Government's letter appears at item No. 300 in the docket and
9 the defense letter appears as item No. 301.

10 I have considered the views and that is my ruling,
11 unless somebody wants to convince me otherwise.

12 MR. GALEOTTI: No, Your Honor, we defer to the
13 Court's discretion.

14 MR. GUADAGNINO: No, Your Honor, we don't.

15 THE COURT: We are going to bring Juror No. 7 in
16 here, and tell her to bring all her things.

17 MR. GALEOTTI: We do agree Your Honor, if you could
18 ask her not speak to any other jurors about her reason.

19 THE COURT: Yes. Great.

20 I'm going to pick up her notebook and keep it. We
21 will destroy it.

22 (Pause.)

23 (Juror enters.)

24 THE COURT: Hello, ma'am. Have a seat. Please have
25 a seat.

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1 If you don't mind, I'm going to address you as Juror
2 No. 7.

3 We have given further thought to what you discussed
4 with us yesterday and I'm going to excuse you from service on
5 this jury. I would ask you not to discuss it with anybody.
6 What I would like you to do at this time is to render your
7 pass to Ms. Jackson, if you haven't already, and report to the
8 second floor jury room where you checked in originally on
9 Monday morning and tell them that you have been excused. You
10 will be given paperwork for your jury service, but do not
11 discuss the case with anybody, including any fellow jurors.

12 Your excusal from this jury still means that you
13 still must observe the no-speaking-about-the-case order. I
14 suppose if a verdict is rendered at some point in the future,
15 then that will allow you to speak about it. But I don't know
16 whether you are in touch with any jurors right now or have any
17 exchanges or exchanged phone numbers, but I would ask you not
18 to speak to anybody --

19 JUROR: Okay.

20 THE COURT: -- about the fact that you have been
21 excused or why.

22 JUROR: Yes.

23 THE COURT: Thank you for your service.

24 Ms. Jackson, what I will ask you to do is line the
25 jurors up in the appropriate seats.

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1 So, what this means in terms of the juror lineup is
2 that alternate Juror No. 2 will now sit in the seat previously
3 occupied by Juror No. 7.

4 We have already dismissed alternate No. 1.

5 We will take a quick break.

6 (Brief recess.)

7 MR. GALEOTTI: Thank you.

8 (The jury enters the courtroom.)

9 THE COURT: We have all jurors present.

10 For reasons that are of no concern to you, we have
11 excused Juror No. 7 and that means that the first juror on the
12 left in the last row will now occupy the seat formerly
13 occupied the juror in the seventh seat.

14 We will continue at this time.

15 Again, I apologize for the delay. We oftentimes
16 understand that there are a lot of moving parts and sometimes
17 we have delays that are unanticipated or we have to deal with
18 some legal issue. So thank you for your patience.

19 We will begin now with the trial.

20 MR. GALEOTTI: Thank you, Your Honor.

21 The Government calls John Warren to the stand.

22 THE COURT: Thank you.

23 (Witness resumes stand.)

24 THE COURT: Good morning, sir, you are still under
25 oath.

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1 THE WITNESS: Good morning.

2 THE COURT: Have a seat.

3 Please proceed.

4 (Continued on next page.)

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1 **JOHN WARREN,**

2 called as a witness, having been previously

3 sworn/affirmed, was examined and testified as follows:

4 DIRECT EXAMINATION (Continuing)

5 BY MR. GALEOTTI:

6 Q Good morning, Mr. Warren.

7 A Good morning.

8 Q Do you recall yesterday testifying that the defendant
9 told you he shot someone named Hex in 2011?

10 A Yes, sir.

11 Q Did anything happen in retaliation to that shooting?

12 A Not to that shooting, but things are happened after the
13 shooting.

14 Q Do you know of anyone else who was shot on A block?

15 A Yes.

16 So after the shooting with Hex, Hex was dealing with
17 guys, Nuke that we talked about yesterday from Fulton side.
18 And after he lost his leg, the guys that he was dealing with
19 from Fulton side started bullying him and talking about him.
20 He still was with M.A.P. He still messed with the guys from
21 my side.

22 So when this happened, he went to the guys, Cheese
23 Ball, and I'm not sure who the other guy from the -- from our
24 side, from M.A.P. side, and told them that, yo, they trying to
25 bully me, you know, he mad. He felt that -- he told them that

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1 they would never did that if I didn't have one leg. So, in
2 retaliation for them violating, hum, Hex, hum --

3 Q For who violating Hex?

4 A For Nuke. For Nuke's side. Nuke and the people that he
5 was chilling with. He went -- no, not him, but Cheese Ball
6 and someone else went and shot at Nuke and his friends, and
7 then that retaliation --

8 Q Let me pause you there, sir.

9 MR. GALEOTTI: Okay, if we could please pull up
10 Government Exhibit 22, please.

11 THE COURT: In evidence?

12 MR. GALEOTTI: This is in evidence, Your Honor.

13 THE COURT: Thank you.

14 Q Mr. Warren, on your screen is Government Exhibit 22.

15 Do you see it?

16 A Yes, I do.

17 Q Who is that?

18 A This is Nuke.

19 MR. GALEOTTI: And if we please pull up Government
20 Exhibit 215A, which is in evidence.

21 Q Now, did you describe something called Fulton side?

22 A Yes, I did.

23 Q What is Fulton side?

24 A This is the side that we call Fulton side. It's a block
25 that guys be on.

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1 Q Can you please indicate it on Government Exhibit 215A if
2 it's there?

3 A The screen is not working, sir.

4 Q Okay. On your screen, do you see Fulton Street?

5 A Yes, it's on the top left.

6 Q And there was a group over there?

7 A Yes, sir.

8 Q Who was part of that group?

9 A This is Nuke and his crew. I don't know anyone else from
10 there.

11 Q Is Hex the individual identified in Government Exhibit
12 14?

13 A Yes, he is.

14 Q Okay. Now, can you please describe what happened after
15 Hex was shot?

16 A After Hex was shot. Like I said, Hex went back over to
17 Fulton side to deal with Nuke cause they were having some
18 business. They was selling drugs together and they became
19 friends. Jokes was being played on -- on Hex about his leg
20 and he said y'all want play with me if I had my leg. He came
21 over to the other side and told Cheese Ball and someone else
22 what happened.

23 Q Who is Cheese Ball with?

24 A Cheese, Ball I'm not sure who he is with, sir.

25 Q Is he part of M.A.P.?

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1 A Oh, he's part of M.A.P. He's also E.A.M.

2 Q Okay.

3 A He goes to the other and tells them for them -- for Nuke
4 and his friends talking about him, Cheese Ball and someone
5 else from M.A.P. went and shot at Nuke and his friends.

6 For that retaliation --

7 Q Let me pause you there.

8 Who went to Fulton side to retaliate.

9 A Cheese Ball and a friend, someone that's else in M.A.P.

10 Q Someone from Cheese Ball, someone from E.A.M.?

11 A Yes.

12 Q What did they do to retaliate?

13 A They shot at Nuke, but no one was hit.

14 Q What happened next?

15 A Nuke came -- Nuke got some guys. I'm not sure if it was
16 Nuke itself, but I know that Nuke sent guys over there to ask
17 for it to retaliate for being shot at.

18 And by them coming over there, Nuke shooters, what
19 we would call them, Nuke shooters they, shot up the block,
20 shot an old man in the head and shot a young kid.

21 Q How do you know that?

22 A I know this from Marlon telling me while I was locked up.
23 I know this when I came home, speaking to more people about
24 it.

25 Q Did you discuss it with the defendant?

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1 A Yes.

2 Q What did he say?

3 A I discussed it with him. He was made because he said he
4 grew up knowing the old man that worked in the car shop on his
5 block.

6 Q And the old man, what happened to him?

7 A He got shot in his head on the block from them
8 retaliating.

9 Q Did he live?

10 A No, he did not. He died.

11 Q How about the young kid?

12 A The kid was okay, I forgot where he got shot on his body,
13 but he is shot too.

14 THE COURT: This is on Ashford?

15 THE WITNESS: Yes, ma'am.

16 MR. GALEOTTI: And if you could please pull up, Ms.
17 Wissel, the following exhibits which are in evidence:
18 Government Exhibits 50, 59 and 60.

19 Q Mr. Warren, what block is depicted in Government Exhibits
20 50, 59 and 60?

21 A This is Ashford, also known as A block.

22 Q And do you know who took these pictures?

23 A No, sir.

24 Q Do you know when they were taken?

25 A No, I do not.

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1 MR. GALEOTTI: You can pull those down.

2 THE COURT: If you need the witness to mark the
3 screen, we can maybe fix it or re-boot it by turning it off
4 and turning it back on.

5 MR. GALEOTTI: We can proceed for now, Your Honor.
6 Thank you.

7 THE COURT: Okay.

8 Q Mr. Warren, did you testify yesterday about a time where
9 E.A.M. decided it needed to get its guns up?

10 A Yes, sir.

11 Q Why was that?

12 A Because other opposition was stronger, had more guns, so
13 we wanted to be stronger. And by being stronger, we needed to
14 have more guns just in case we get more beef.

15 Q Did E.A.M. get its guns up?

16 A Yes, it did.

17 Q Did E.A.M. members share guns with one another?

18 A Yes, we did.

19 Q Did you have a tradition on New Year's Eve?

20 A Yes, we did.

21 On New Year's Eve, we would get all the guns we have
22 and we'll meet up on any block, A block, Essex, Milford, and
23 when the ball drop at 12 o'clock, we shoot our guns in the
24 air.

25 Q How many guns were present in such a situation?

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1 A There could be eight to ten, twelve guns.

2 MR. GALEOTTI: If we could please pull up Government
3 Exhibit 211A. This is in evidence.

4 If we would please play timestamp -- excuse me.
5 Thank you, Ms. Wissel. 611A, which is in evidence, and
6 timestamp one minute to 1:17.

7 (Video playing.) (Video stopped.)

8 Q Mr. Warren, who is depicted in Government Exhibit 611A?

9 A This is Chucky. Quandel Smothers.

10 Q Where was this taken?

11 A This was at a gun range in New Jersey.

12 Q Why did you go there?

13 A It was one of our friend's birthdays.

14 MR. GALEOTTI: Can I show just to the witness and
15 counsel Government Exhibit -- excuse me -- 1015.

16 Q Focusing here, sir --

17 A Yes, sir.

18 Q -- do you recognize what is depicted in Government
19 Exhibit 1015?

20 A Yes, I do.

21 Q What is it?

22 A This is a message on my phone. I was speaking to old
23 friend of mines, D.

24 Q Okay. And is this a true and accurate recording of a
25 conversation that you had via text message?

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1 A Yes, sir.

2 Q Okay.

3 MR. GALEOTTI: If we would please publish this, Your
4 Honor. The Government offers Government Exhibit 1015.

5 MR. GUADAGNINO: No objection.

6 THE COURT: We admitted Government Exhibit 1015.

7 (Government's Exhibit 1015 received in evidence.)

8 MR. GALEOTTI: Okay. If we can please start
9 actually at the second page. And blow that up.

10 Q Do you see the first message there, sir, on the screen?

11 A Yes, sir.

12 Q Who is that from?

13 A This is from D.

14 Q What did he say?

15 A Good looks. FLL. Good look, bro. You trying to fuck
16 with the gun range.

17 I respond when, today?

18 He said yeah, around five.

19 He also said Chuck supposed to be going with Little
20 J, me, and Jovi.

21 Q Do you think this is -- what's the date of that message?

22 A This is -- this is December 12, 2017.

23 Q Okay. Do you know if that's the same time or a different
24 time you went to the gun range?

25 A No, that's the same time.

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1 THE COURT: You mean the same time as depicted in
2 Government Exhibit 611A?

3 THE WITNESS: The video. Yes, ma'am.

4 MR. GALEOTTI: If we can go back to the first page,
5 please.

6 Q While we are on this document, sir, yesterday you
7 testified about an incident that happened to you in 2017 at an
8 Applebee's. Do you recall that?

9 A Yes, sir.

10 Q In short, can you remind us what happened?

11 A There was an argument that ensued between a friend called
12 Tryna. We also know her as Snoop. She had an argument with a
13 female that worked at Applebee's.

14 After this argument between the female that worked
15 at Apple Bees and Tryna, the lady that worked in Applebee's
16 had to be -- had been let go by her boss. Because of that,
17 two guys she was with wanted to fight Tryna and D. I was with
18 Tryna, D, and me. They was aggressive and wanted to fight. A
19 fight ensued between me, D, and the two guys, Tryna.

20 When five to six other guys stood up, Tryna ran, me
21 and D got jumped and in that process D broke his eye socket.

22 MR. GALEOTTI: Can we please show the witness what's
23 on the first page of Government Exhibit 1015, all of the
24 messages.

25 Q Now, that first text message, sir, from D Stacks, who is

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1 that?

2 A Who is D Stacks or the picture?

3 Q I'm sorry. Who is D Stacks?

4 A D Stacks is Devon Bristol.

5 Q Was he with you at the Applebee's?

6 A Yes, he was.

7 Q And he sent you an image here?

8 A Yes, he did.

9 Q You wrote "aight bet." What does that mean?

10 A I already knew who he was talking about. He sent me a
11 picture of the guys that was like -- two guys that we found
12 out was at the party, two of the main guys that was at the --
13 not the party, the Applebee's that we got into the brawl with.

14 Q And he sent you another image, and just focusing on the
15 part where he said we could watch their page. What does that
16 mean?

17 A We was -- we didn't know who these guys that we had to
18 fight with at the Applebee's, so after -- after Applebee's, we
19 find out their names. So we wanted to watch and do our
20 homework with them so we could find out where they from, so we
21 can find them.

22 Q When you were in E.A.M., was that a common way to --
23 withdrawn.

24 When you were in E.A.M., was looking at social media
25 pages a common way to find opposition members?

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1 A Yes, it is.

2 MR. GALEOTTI: If we can scroll down a little,
3 please.

4 Q Okay. D Stacks said to you, on December 11, 2017,
5 timestamp 11:01:08, ima look up da first one and watch?

6 What does that mean?

7 A The first picture that he sent me, he is going to look up
8 his Facebook and watch to see what he could find out.

9 Q What did you respond?

10 A I said, "Aight, bet, I got the second."

11 Q What does that mean?

12 A I'm telling him that I'm okay, I'm with him, I'm going to
13 do the same thing, I'm going to watch the second picture that
14 he sent me.

15 Q On February -- excuse me?

16 MR. GALEOTTI: Your Honor, let me correct the
17 record. I think I said February. The document clearly says
18 December 12, so I apologize.

19 THE COURT: Thank you. I will ask the court
20 reporter to make the correction to December. Thank you.

21 Q Sir, if I could direct your attention to December 12,
22 2017, at 1:34:27, there is a message from D Stacks with an
23 image and we will go to the image in a second, but do you know
24 what it is?

25 A Yes, because I'm reading the next message that he sent

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1 me. He told me that it was Premo page.

2 Q Who is Premo?

3 A Premo is somebody that we was beefing with. He's from
4 Montauk.

5 MR. GALEOTTI: Okay, if we could flip to the next
6 page.

7 Q Who is this, sir, on page 3 of 5 in Government Exhibit
8 1015?

9 A This is one of the guys that we had a brawl with and this
10 is the man that shot me.

11 Q When did he shoot you?

12 A July 4, 2019.

13 Q Okay. We will come to that, sir?

14 MR. GALEOTTI: Next page, please. Page 4.

15 Q Who is this in Government Exhibit 1015, page 4?

16 A This is another guy that was at Applebee's when we had
17 the brawl that was fighting against us.

18 MR. GALEOTTI: If we can go to page 5, please.

19 Q Do you know who this is, sir?

20 A Yes, this is Premo page. A guy that we was beefing with
21 from Montauk, also the guy that we find out that got Black
22 killed.

23 Q Why were you looking for him? Why were you looking at
24 his page?

25 A Because we still wanted revenge on Premo even though we

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1 still -- we already got the guy that killed Black. We find
2 out that Premo is the one that sent him, so we wanted Premo
3 also.

4 MR. GALEOTTI: Okay. Can we please show just to the
5 witness and counsel Government Exhibit 1004.

6 Q Sir, I want to direct your attention to 2018 where we
7 left off yesterday. Do you recognize what's depicted in
8 Government Exhibit 1004?

9 A This is a message sent to me by -- or from Camacho,
10 Jonathan, I don't know who that is.

11 Q Did you receive it on your phone?

12 A Yes, sir.

13 Q Is it a true and accurate representation of a message you
14 received?

15 A Yes, sir.

16 MR. GALEOTTI: Your Honor, the Government offers
17 Government Exhibit 1004.

18 MR. GUADAGNINO: No objection.

19 THE COURT: We receive Government Exhibit 1004.

20 (Government's Exhibit 1004 received in evidence.)

21 Q And you don't know who that person is, sir?

22 A Yeah. I don't know if I sent it or -- cause it say sent.

23 Q Let's look at the next page.

24 What is this in Government Exhibit 1004, page 2.

25 A Yesterday we spoke about, hum, a situation why we felt

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1 like Iz wasn't -- wasn't in a good position, and how Mazzi as
2 a whole, NYB as a whole was in problems. One of the problems
3 was that a lot of the Milla hoods that was under the NYB was
4 leaving the NYB and starting their own nation, which they was
5 calling Double NYB, the new New York Blood Nation. And in
6 this nation, they still consider they self Milla and started
7 making up their own hoods.

8 And in this picture, these are the hoods that they
9 had that we got our hands on and the people that had it.

10 Q What was the purpose of getting your hands on these?

11 A Because we felt like they was disrespecting and we wanted
12 to -- we wanted to see what was going on and we also wanted to
13 retaliate for playing disrespect.

14 Q What was the defendant's position within E.A.M. in 2018?

15 A At this time, this is the time he was, hum, had NYB
16 Nation. This is the time that he declared his self to have
17 the NYB Nation, and he felt like these -- we all felt like
18 these was oppositions to us now because they going against
19 what he was saying.

20 Q We don't need do it on the screen, but I'm going to point
21 you to Government Exhibit 800A, which is the demonstrative.
22 Where on here, sir, is the NYB Nation that the defendant
23 attempting to gain control of?

24 A This is on the second line in the middle.

25 Q And that's above the Elite Assassin Millas?

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1 A Yes, sir.

2 MR. GALEOTTI: If we could please show just to the
3 witness and to counsel, Government Exhibit 1005.

4 Q Focusing on Government Exhibit 1005, do you recognize
5 this, sir?

6 A Yes, I do.

7 Q How do you recognize it?

8 A I see my phone number 2, of my phone numbers, and I see a
9 contact that I sent a message to.

10 Q What is this -- okay. What is this text message?

11 A This text message is someone that I was bringing only or
12 I was bringing to the meeting to Blood on to E.A.M. and I was
13 sending him his paperwork.

14 MR. GALEOTTI: Your Honor, Government offers
15 Government Exhibit 1005.

16 MR. GUADAGNINO: No objection.

17 THE COURT: We receive Government Exhibit 1005.

18 (Government's Exhibit 1005 received in evidence.)

19 MR. GALEOTTI: If you can publish, please.

20 Q So up top, there are several attachments sent by other P?

21 A Yes.

22 Q On June 26, 2018 at 2:11.

23 Whose phone is other P?

24 A That's my other phone. I had two phones at this time.

25 Q Why did you have two phones?

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1 A Because I had a business also.

2 Q What was your business?

3 A I sell hair, extensions, hair extensions.

4 Q And focusing on this text message exchange, the first
5 message under the attachments says you have 21 days to
6 remember your Elite Assassin Milla oath and 21-second oath.

7 What does that mean?

8 A What I was saying yesterday about the 21, you had 21
9 seconds, 21 days to remember you Elite Assassin Millas oath,
10 which is the AKs and your 21-second oath is the oath for the
11 NYB Nation.

12 MR. GALEOTTI: Can you scroll down, please.

13 Q Then the message on 7/6/2018, 2:54, in response to a
14 question, whose number is this, what did you write?

15 A Hum, I told him, hum, well, he asked me whose number
16 this, I said it's me. I changed my number, my bad.

17 He said, Oh, wasss popping?

18 I said, Us Brody.

19 Then I asked him, Have you been studying?

20 Q When you had said "me," what did you identify yourself
21 as?

22 A Smilez. Everybody know me as Smilez.

23 Q On the bottom, what does "have you been studying" mean?

24 A The paperwork I gave him, like I told him you have 21
25 days to know this or I didn't think he was serious about

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1 turning Milla. That's why I asked him did he study what I
2 told him to study.

3 Q Okay.

4 MR. GALEOTTI: If we can please scroll to the next
5 page, page 2, Government Exhibit 1005.

6 Q Let me just ask you this: Who is Rodrick?

7 A That's my little brother.

8 Q What is this depicted in Government Exhibit 1005, page 2?

9 A This is the Elite Assassin Millas' oath.

10 Q Can you read it?

11 A "To be Elite Assassin Millas one must know what one does
12 affects us all, so to be Elite, one must move discreet. I
13 give my respect, love and loyalty, I vow to keep my AK strap
14 tight despite all odds. We live by the 21 but die by the AK.
15 A to the K. I'm screaming to the death of me, so let it be
16 known I was a 50 shot shooter so I can rest in peace."

17 Q Is that the oath as you know it?

18 A Yes, it is.

19 Q What does it mean "We live by the 21 but die by the AK"?

20 A That means that we live by the New York Blood Nation
21 rules, but first and foremost, before NYB, we are AK, we are
22 Elite Assassin Millas.

23 Q What is a 50-shot shooter?

24 A This is what we call ourselves. We are 50-shot shooters,
25 we consider ourselves AKs. Elite Assassin Millas consider

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1 ourself AKs and 50 shots can be shot from an AK.

2 MR. GALEOTTI: If we can please turn the page to
3 Government Exhibit 1005, page 3.

4 Q What is this, sir, on Government Exhibit 1005, page 3?

5 A This is lingo, but pacifically [sic], this is salutes
6 that New York Bloods, New York Blood Nation Millas used when
7 seeing them or departing them.

8 Q Have you heard the phrase or are you familiar with the
9 phrase that's my music?

10 A Yes.

11 Q What does that mean?

12 A This is -- this is lingo. This is saying, hum -- this is
13 saying what's up to my bro. If you are Milla, you know, like
14 I'm Milla, that's my music.

15 And in response -- there is many response. You be
16 like that's my music, like, you know the sound or everything
17 foreign. It's many response.

18 Q What are the points of these call and responses?

19 A To represent who you are, to represent you being Milla.
20 Codes or lingo is to hide what we are saying to anyone that's
21 not Milla.

22 MR. GALEOTTI: If we can move to the next page,
23 please.

24 Q What's depicted here, Mr. Warren, in Government Exhibit
25 1005, page 4?

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1 A This is the breakdown of the Elite. The word Elite in
2 Elite Assassin Millas, where we broke down every letter from
3 Elite, and then the next one is the breakdown for Milla.

4 MR. GALEOTTI: And the next page, please.

5 Q Government Exhibit 1005, page 5, what is this, sir?

6 A This is Elite Assassin Millas salutes. These is lingos
7 that only Elite Assassin Millas use when seeing or departing
8 each other.

9 MR. GALEOTTI: Next page, please.

10 If you could move that to the side, Ms. Wissel,
11 thank you.

12 Q Up on top in the main screen, sir, what is this document?

13 A This right here is the 21-second oath. It say pledge,
14 but this is just the oath right here.

15 Q And Government Exhibit 1005, page 6, sir, if you could
16 please read the oath.

17 A "It take 21 seconds to be Blood, being blood is about
18 respecting your family and doing what you would. Learning to
19 love and trust your brothers and sisters while protecting our
20 hood. Left over my heart is how I be, then it's death to my
21 enemies. I take this oath in total devotion and dedication,
22 representing ride or died or it's death that I am facing, NYB
23 is in my veins and I give my gangsta never to break my stride,
24 switch my ride or ever change, always for the one universal
25 hoods under the NYB.

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1 Two is for the B in Blood and banging what we love
2 to do.

3 One is for the one Nation sworn under the 21-second
4 oath.

5 To live, love, respect, loyalty, honor with trust
6 and peace until all oppressions cease. Zero tolerance, two
7 hears, one soul East be the way by Milla I stay."

8 Q Did you take this oath seriously, sir?

9 A Yes, I did.

10 Q Did other members of E.A.M. take it seriously?

11 A Yes, they did.

12 Q Could you move up in the gang without taking it
13 seriously?

14 A No, you cannot.

15 Q Could you be become the GF or the godfather without
16 taking it seriously?

17 A No, you cannot.

18 Q Did the defendant take it seriously?

19 A Yes, he did.

20 MR. GALEOTTI: Next page, please.

21 Q Government Exhibit 1005, page 7.

22 What's depicted in Government Exhibit 1005, page 7,
23 sir?

24 A This is the New York Blood Nation pledge.

25 Q And what's the difference between the oath and the

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1 pledge?

2 A The oath is what we live by, and this right here is you
3 are saying this, that's your pledge that these is things that
4 you will be doing.

5 MR. GALEOTTI: Your Honor, I think we may need to
6 take a break.

7 THE COURT: I think one of the jurors needs a break.
8 All right, thank you. Please return as soon as you
9 can.

10 THE COURTROOM DEPUTY: Everyone should come.

11 THE COURT: Please don't talk about the case. Thank
12 you.

13 (Jury exits the courtroom.)

14 THE COURT: Hopefully not more than five to ten
15 minutes, okay?

16 MR. GALEOTTI: Yes, Your Honor.

17 THE COURT: Thank you.

18 (Recess taken.)

19 THE COURT: If anyone else needs to take a break,
20 now is a good time to take one.

21 (Recess taken.)

22 (In open court - jury not present.)

23 THE COURT: May we please have Mr. Smothers back in
24 his seat.

25 Where is the defense lawyer?

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1 THE COURTROOM DEPUTY: He is here.

2 THE COURT: Sorry.

3 You can bring the witness back on the stand too, to
4 save us some time, please.

5 MR. SIEGEL: Yes, Your Honor.

6 THE COURT: Thank you.

7 (The jury enters the courtroom.)

8 THE COURT: All jurors are present.

9 Please have a seat, everybody.

10 You may resume.

11 MR. GALEOTTI: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MR. GALEOTTI: (Continuing.)

14 Q Mr. Warren, on Government Exhibit 1005, page 7, what do
15 you see here?

16 A The New York Blood Nation pledge.

17 Q For starters, what's the difference between the pledge
18 and the oath?

19 A The oath is what we'll live by, and this is -- this is
20 what we would call standing on that oath. We are pledging to
21 love our Bloods, love NYB, die for it. This is kind of saying
22 what we're -- what we're doing.

23 MR. GALEOTTI: And, Ms. Wissel, if we can please go
24 back briefly to the first page, and looking at the phone
25 numbers in the top left.

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1 THE COURT: This is 1005?

2 MR. GALEOTTI: Correct, Your Honor.

3 THE COURT: All right.

4 Q Who is the person besides you on this text message
5 exchange?

6 A This is Charlie. This is someone that I knew most of his
7 life, a young kid. Someone tried to bring him Blood in the
8 wrong way, had him doing some dumb stuff, so I was bringing
9 him under me to teach him the right way to be Blood.

10 Q Did you send the E.A.M. and Blood documents to many
11 people?

12 A Yes, I did.

13 MR. GALEOTTI: If we could show just to the witness
14 and counsel Government Exhibit 1006.

15 And for efficiency, let's show him each page in this
16 document, please. There are seven pages.

17 Back to page one, please.

18 BY MR. GALEOTTI:

19 Q Mr. Warren, what is depicted in Government Exhibit 1006?

20 A This is a message from my phone, um, which is down as
21 other phone, me sending it to Acon, another one of my drops.

22 Q Does this accurately reflect a message that you sent to
23 someone name Acon?

24 A Yes, sir.

25 MR. GALEOTTI: Your Honor, the Government offers

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1 Government Exhibit 1006.

2 MR. GUADAGNINO: No objection, Your Honor.

3 THE COURT: We admit Government Exhibit 1006.

4 (Government's Exhibit 1006 received in evidence.)

5 BY MR. GALEOTTI:

6 Q Mr. Warren, what's a drop?

7 A Someone that is directly under you that you brought home
8 to Blood or to Elite Assassin Millas.

9 Q And what paperwork did you send this individual Acon?

10 A I sent him the oath, the pledge, the 21-second oath,
11 the -- and the salutes.

12 MR. GALEOTTI: If we could please show to the
13 witness and counsel Government Exhibit 1008.

14 Q Now, look at Exhibit 1008. What is depicted here?

15 A This is a message that was sent to me by a Milla called
16 Ace.

17 Q Was this sent to your phone?

18 A Yes, it was.

19 Q Did you participate in this text message exchange?

20 A Yes, I did.

21 Q Is there an audio file attached to it?

22 A Yes, it is. And I responded that the song was -- I
23 picked three emojis, the fire emojis, saying it was a good
24 song.

25 MR. GALEOTTI: Your Honor, the Government moves to

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1 admit Government Exhibit 1008, which is the text message
2 exchange, and 1008A, which is the audio file attached to it.

3 MR. GUADAGNINO: No objection.

4 THE COURT: We admit 1008 and 1008A.

5 (Government's Exhibits 1008 and 1008A received in
6 evidence.)

7 BY MR. GALEOTTI:

8 Q Looking at the top, Mr. Warren, who are you in
9 communication with in Government Exhibit 1008?

10 A I'm in communication with a guy named Ace Miller.

11 Q What did he send you?

12 A He send me a song that depicted Elite Assassin Millas, or
13 Millas.

14 Q What is the title of the audio file?

15 A It's called Gang Anthem.

16 Q What did you respond?

17 A I responded with three emojis, the fire emojis.

18 MR. GALEOTTI: If we could please play the first 45
19 seconds of Government Exhibit 1008A.

20 (Audio playing.) (Audio stopped.)

21 Q Do you recognize that song, Mr. Warren?

22 A Yes, I do.

23 Q And the sound that was made in the beginning, what is
24 that?

25 A That's the sound that we make to call out for Milla.

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1 Q What does Milla The Gang mean?

2 A He's depicting what we are, we are the gang, we are Blood
3 as a gang, but we are Milla completely.

4 Q Did you hear a reference in that song to Mazzi?

5 A Yes, sir.

6 Q What is that?

7 A Mazzi is another name we call ourselves as Millas.

8 MR. GALEOTTI: If we could please go to -- just the
9 witness, Government and counsel -- Government Exhibit 1010.

10 Q Focusing on this document, Mr. Warren, do you recognize
11 what's depicted in Government Exhibit 1010?

12 A Yes. It's a message from my phone talking to Mazzi name,
13 Santana AK, and I put NC, so he's from North Carolina.

14 THE COURT: He is from what?

15 THE WITNESS: He's from North Carolina.

16 THE COURT: Okay, thank you.

17 MR. GALEOTTI: Your Honor, the Government offers
18 Government Exhibit 1010.

19 MR. GUADAGNINO: No objection.

20 THE COURT: We receive Government Exhibit 1010.

21 (Government's Exhibit 1010 received in evidence.)

22 Q Do you know this individual, Mr. Warren, Santana AK NC?

23 A No, I do not.

24 Q Why did he contact you?

25 A Because I am the second in command and I have the town.

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1 No, I did not know this individual and he contacted me because
2 I am the second in command and I am who he knows to have it,
3 the Elite Assassin Milla.

4 Q Okay.

5 THE COURT: Wait. You are the second in command, so
6 he contacted you for what purpose?

7 THE WITNESS: He know that at this time I have Elite
8 Assassin Millas for the town, so he contact me. I was the
9 only one that he was in contact with that I know of. So he
10 wanted to explain some things that he -- he heard that it was
11 going on with Elite Assassin Millas.

12 THE COURT: I see. Thank you.

13 Q And, Mr. Warren, directing your attention to messages on
14 April 26, 2018, which is shown on the screen, and specifically
15 starting at 5:39:51 p.m. from Santana AK to you, what does he
16 say there?

17 A He said: Right side, bro. So what position am I
18 holding, bro? We going to build there. We going to build
19 there.

20 Q Hang on one second.

21 The next message --

22 A Yes.

23 Q -- 11, says: Sent.

24 A Yes.

25 Q Did you send that message?

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1 A Yes, I did.

2 Q What did you -- what did you say?

3 A I said we're going to build there. We going -- we going
4 to build, meaning that me and him gonna talk more. We
5 gonna -- I'm explaining more to him. Then I was explaining
6 there is no LU, no lineup right now. Everybody just AK, but
7 me and Chucky is situating a lot right now.

8 Q What did you mean by "me and Chucky is situating a lot"?

9 A Like I explained, a lot was going on with the -- with
10 Millas and also with Elite Assassin Millas, so me and Chucky
11 was reconstructing Elite Assassin Millas and also the NYB
12 Nation.

13 MR. GALEOTTI: If we can please go to page 2.

14 THE COURT: Can I ask, what did you mean: We are
15 going to build there?

16 THE WITNESS: I didn't put a pause, but it was we're
17 going to build. It supposed to be a period right there.
18 Explaining to him, that me and him -- I'm going to explain
19 more to him for he could understand. And then the next -- the
20 next line was supposed to be: There is no lineup, then
21 another period.

22 I was saying that because he asked position what he
23 was holding, and at this time there was no lineup and nobody
24 had positions. We were just trying to get everybody just be
25 on -- just to be Assassin Milla.

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1 THE COURT: All right. Thank you.

2 Q But to be clear, did you have a position?

3 A Yes, I did.

4 Q Did the defendant have a position?

5 A Yes, he did.

6 Q And who was in charge of situating?

7 A We was in charge, but before me, it's Chucky's. He's the
8 one that gonna have the say so.

9 Q To be clear, what does "situating" mean?

10 A Situating is making it happen or fixing or having the
11 sayso of what's going on.

12 Q Did that include making a lineup?

13 A Yes, sir.

14 Q And would the lineup be beneath you?

15 A Yes, it will.

16 Q Would the lineup be beneath the defendant?

17 A Yes, it will.

18 MR. GALEOTTI: Can we go to page 2, starting with
19 message 13?

20 Q Now, this is an inbox message to you, sir; is that
21 right --

22 A Yes.

23 Q -- on message number 13?

24 And Santana AK said: I'm down in NC, bro.

25 What does that mean?

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1 A He's telling me he's down in North Carolina.

2 Q Were there gang members outside of New York State?

3 A Yes, they was.

4 MR. GALEOTTI: If we can please go to message number
5 21.

6 BY MR. GALEOTTI:

7 Q Who sent this message, sir, message number 21?

8 A I sent this message.

9 Q What did you say?

10 A I said: If you do have a regime, it is for you to start
11 to build your LU -- which is lineup -- with official niggas or
12 guys, that's going to live, build and die for this AK.

13 Q What does it mean to die for this AK?

14 A Exactly what it says, that you're gonna go all out for
15 the Elite Assassin Millas. And, you know, just as you went
16 all out in life, you'll die for the Elite Assassin Milla.

17 MR. GALEOTTI: And on page 3, please, starting at
18 message 27.

19 Q Who sent this message, sir, on April 27, 2018, at time
20 stamped at 12:19:14?

21 A Santana sent it to me.

22 Q What does he say here?

23 A I was on Ashford with Buck and Drama and some more of the
24 AKs.

25 Q What's Ashford?

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1 A That's A block.

2 MR. GALEOTTI: You can take that one down, please.

3 Q All right. Staying in 2018, sir, were you personally
4 selling drugs at the time?

5 A No, I was not.

6 Q Was the defendant?

7 A Yes, he was.

8 Q Did there come a time later where you were selling drugs?

9 A Yes, I was. I would three-way, someone trying to get
10 marijuana, be the middleman, excuse me.

11 Q In 2018, what kind of drugs was the defendant selling?

12 A Marijuana.

13 Q How do you know that?

14 A I bought from him a few times, and also I was at the
15 house where I would see the marijuana.

16 Q Where was the house?

17 A This was on Van Siclen Court in Jamaica Avenue in East
18 New York.

19 Q Was there a time earlier where the defendant was selling
20 crack cocaine?

21 A Yes, sir.

22 Q In 2018 was he selling crack cocaine?

23 A No, he was not.

24 MR. GALEOTTI: Can we please show to the witness and
25 counsel, Government Exhibit 1013? And let's focus on the top

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1 so the witness can please see it.

2 BY MR. GALEOTTI:

3 Q Do you recognize what's depicted in Government Exhibit
4 1013, sir ?

5 A Yes, I do.

6 Q What is it?

7 A This is a mess -- a message from Chuck. I was talking to
8 Chucky from two of my numbers.

9 Q Is this a true and accurate representation of a text
10 message exchange that you had with the defendant?

11 A Yes, it is.

12 MR. GALEOTTI: Your Honor, the Government offers
13 Government Exhibit 1013.

14 MR. GUADAGNINO: No objection.

15 THE COURT: We receive Government Exhibit 1030.

16 (Government's Exhibit 1013 received in evidence.)

17 Q Sir, what is depicted in the top left corner where it
18 says "participants"?

19 A This is my first number, it's Chucky. Chucky with his
20 number, and then this is my second number that say Other
21 phone -- Other P, which is other phone.

22 MR. GALEOTTI: And if we can scroll down a little
23 bit starting with the message on July 16, 2018, at timestamp
24 7:37:05.

25 Q Sir, what did you write in that message?

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1 A I said: Bro, how much -- how much plate?

2 Q What's is a plate?

3 A A plate is -- a plate is a -- it's a certain amount of
4 marijuana. It's not a ounce. It's a pound of weed. A pound.

5 Q What did the defendant respond?

6 A Um, he said: For you, 17.

7 Q What's 17?

8 A \$1700.

9 Q Did you pick up the marijuana from the defendant?

10 A I'm not sure.

11 Q Have you picked up marijuana from the defendant before?

12 A Yes, I have.

13 MR. GALEOTTI: If we can please show the witness and
14 counsel Government Exhibit 216A.

15 Q Do you recognize what's depicted in Government Exhibit
16 216A, sir ?

17 A Yes, I do.

18 Q How do you recognize it?

19 A I've been there many times, and I actually used to live
20 there for a short amount of time.

21 MR. GALEOTTI: Your Honor, the Government offers
22 Government Exhibit 216A.

23 MR. GUADAGNINO: No objection.

24 THE COURT: We receive Government Exhibit 216A.

25 (Government's Exhibit 216A received in evidence.)

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1 Q Mr. Warren, what is that in Government Exhibit 216A?

2 A This is a place that I used to live, and a place that
3 Chucky used to be where I used to grab marijuana from him and
4 chill with him at.

5 Q Did the defendant keep marijuana in that house?

6 A Yes, he did.

7 Q Did you personally observe that?

8 A Yes, I did.

9 Q Did the defendant keep guns in that house?

10 A Yes, he did.

11 Q Did you personally observe that?

12 A Yes, I did.

13 Q When did the defendant move -- well -- withdrawn.

14 Yesterday you testified that the defendant lived
15 somewhere else; is that right?

16 A Yes, I did.

17 Q Where did he live?

18 A He lived on Berriman between Pitkin and Belmont.

19 Q When did the defendant move to Van Siclen, in what's
20 depicted in Government Exhibit 216A?

21 A He never moved there. A friend of his lived there.

22 Q Do you know why he went there?

23 A Well, at this time Parole wasn't letting him be in East
24 New York, so he still -- he -- if he was in East New York, he
25 would just be at that house, so that's why he would go there.

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1 Q Did you ever drive your car to the house in Government
2 Exhibit 216A?

3 A Yes, all the time.

4 Q Did the defendant ever personally out of his own words
5 ask you to keep anything in your car?

6 A Yes. Any time we would go out, he would tell me to grab
7 -- grab the gun or he'll give me a gun and tell me to put the
8 gun in the car, and I would put it in the hood of my car.

9 Q Why the hood?

10 A That was the less spots that detectives will check if
11 they would stop me.

12 Q Now, were you ever, sir, involved in frauds or scams?

13 A Yes, I was.

14 Q How so?

15 A When I was younger, and sometimes when I was older, we
16 would go to mailboxes in Queens or Long Island and steal
17 people mail that was -- that had credit cards. And from
18 there, we would turn these credit cards on from information
19 that we got from online and go to stores and buy merchandise
20 from it.

21 I also used to go online and buy people information,
22 cards information, and take that information and put it on
23 credit cards. And sometimes it works, sometimes it don't.
24 And we try to buy merchandise from it.

25 Q Did other members of E.A.M. engage in fraud?

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1 A Yes, they did.

2 Q Who?

3 A Tyshawn, Marlo, D, Chucky, 40, for the most part, and
4 other guys.

5 Q Focusing just on the defendant for a moment, how did he
6 engage in fraud?

7 A I never was there when he engaged in fraud, but in
8 2019 --

9 Q Just how do you -- how do you know what you're about to
10 tell us?

11 A He told me hisself.

12 Q Okay.

13 A In 2019, the day before I got locked up for a parole
14 violation, he was going down south with an associate of ours
15 named Jay to -- um, scam and, um, do fraud. This is something
16 he said. He said, when I got locked up: You should've just
17 came with us. Because I knew what they was gonna do. If I
18 would've went with them, I would've never got locked up.

19 Q Who made the most money from scams with E.A.M.?

20 A Tyshawn Corbett.

21 Q How do you know that?

22 A He was a close friend. He come through with Rolexes,
23 money and, you know, he was making money with drugs, but he'd
24 tell me like what we would call clap. When you use your
25 credit card and you swipe it and it go through, you say: I

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1 clapped it. So he said: I clapped this Rolex. So, that's
2 what Tyshawn did.

3 Q What does it mean to clap a Rolex?

4 A That means that he scammed a Rolex.

5 MR. GALEOTTI: Could we show just to the witness and
6 counsel what is in Government Exhibit 1030.

7 BY MR. GALEOTTI:

8 Q Do you recognize this, Mr. Warren?

9 A Yes, I do.

10 Q How do you recognize it?

11 A This is a message from my phone that I see, and Little J.

12 Q Who is Little J?

13 A The guy that I just said was going down south with Chucky
14 to scam.

15 Q Is this a true and accurate representation of a message
16 exchange you had with Little J?

17 A Yes, it is.

18 MR. GALEOTTI: Your Honor, the Government offers
19 Government Exhibit 1030.

20 MR. GUADAGNINO: No objection.

21 THE COURT: We admit Government Exhibit 1030.

22 (Government's Exhibit 1030 received in evidence.)

23 Q Now, focusing on page 1 of this exchange.

24 Mr. Warren is this from January 8th, 2018?

25 A Yes, it is.

Warren - direct - Galeotti

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1 Q And what did you -- what did you write here?

2 Well, let me just ask, is "Other P" still your
3 phone?

4 A Yes, it is.

5 Q What did you write?

6 A I said: Send those pics of me and Reck. He said: All
7 right. And then he -- and then he sent the picks.

8 Q Who is Reck?

9 A That's Tyshawn Corbett.

10 Q Is that the individual you previously identified in
11 Government Exhibit 5?

12 A Yes, it is.

13 MR. GALEOTTI: Next page, please. 1030, page 2.

14 Q Who is that, sir?

15 A This is me and Reck.

16 Q Are you making any signs?

17 A Yes. We -- we are throwing up the Mazzi sign.

18 Q What's the Mazzi sign?

19 A When we throw up our pinkie and our point finger pointing
20 down to make an M.

21 MR. GALEOTTI: Your Honor, let the record reflect
22 that the witness indicated with his hand what he described.

23 THE COURT: All right. All right, so noted.

24 MR. GALEOTTI: Can we please just show to the
25 witness and counsel Government Exhibit 1055?

Warren - direct - Galeotti

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1 BY MR. GALEOTTI:

2 Q Mr. Warren, do you recognize what is in Government
3 Exhibit 1025?

4 A Yes. I see my number on the phone and another number
5 that I do not recognize, but that I was texting.

6 Q Does this exchange that you see on 1025 represent a true
7 and accurate exchange that you had with the phone number
8 631-618-6979?

9 A Yes, sir.

10 MR. GALEOTTI: Your Honor, the Government offers
11 Government Exhibit 1025.

12 MR. GUADAGNINO: No objection.

13 THE COURT: We admit Government Exhibit 1025.

14 (Government's Exhibit 1025 received in evidence.)

15 Q Mr. Warren, if you could start with the message on top
16 from March 24th, 2018, time stamped 2:31:40.

17 A It says: This is the only thing I got left. I sold the
18 other yesterday morning.

19 Q Who wrote that?

20 A The number that -- the number that I was writing, 631
21 number.

22 Q Not you?

23 A No, sir.

24 Q And did he follow up with a second message?

25 A With that message was an attachment, and then he put two

Warren - direct - Galeotti

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1 dollar sign, meaning \$200.

2 Q What did you write in response at timestamp 2:48:54?

3 A I asked him do we have food in the house.

4 Q What do you mean by that?

5 A Food means bullets for the gun.

6 Q What did he respond at timestamp 2:53:10?

7 A He said: Yeah, I got -- yeah, a few pieces, but gotta go
8 shopping for some more.

9 Q What were you searching for from this individual?

10 A I was searching for a gun.

11 MR. GALEOTTI: Can we flip the page please, page 2?

12 Q Is that a photo of what he sent you?

13 A Yes, sir.

14 THE COURT: A photo of a photo that he sent or a
15 photo of a gun that he actually sent?

16 THE WITNESS: Yeah, a photo of a gun that he
17 actually sent.

18 BY MR. GALEOTTI:

19 Q He took a photograph of a gun?

20 A Yes, and sent it to me.

21 Q How often did you carry firearms?

22 A In 2000 --

23 Q I believe this message is --

24 MR. GALEOTTI: If we can just go back to make sure
25 we get it right.

Warren - direct - Galeotti

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1 Q -- March 2018.

2 A Not at all. I started -- only time I carried firearms is
3 when I was with Chucky.

4 Q How often did the defendant from your personal
5 observations carry firearms?

6 A Any time we was out, he would never have it on person, it
7 would be in my car. So you could say two or three times a
8 week -- a month because we would go out like two or three
9 times a month.

10 Q And from your knowledge, whenever you saw him, did he
11 carry a firearm?

12 A Around this time, you wouldn't see Chucky unless he was
13 in the house or unless -- or when we went out. But any time
14 we did go out, he had -- he had gun with us, yes.

15 Q Why wouldn't you see him out frequently at this time?

16 A Because Parole didn't want him in East New York and he
17 was staying low.

18 Q Why was he staying low?

19 A A lot was going on and he was just trying not to be
20 violated by Parole.

21 Q Were there violent issues happening with E.A.M. in 2018?

22 A Yes, many.

23 MR. GALEOTTI: We will turn to that in a moment.

24 THE COURT: So he was now allowed to be in East New
25 York?

Warren - direct - Galeotti

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1 THE WITNESS: No, ma'am.

2 Q You may have testified to this, but did E.A.M. members
3 share guns?

4 A Yes. Yes, sir.

5 Q All right. Turning your attention to 2018.

6 In summary, and we'll break it down, but in summary
7 what were the issues that E.A.M. was having at the time as far
8 as rivalries go?

9 A One of the issues was the picture that you depicted of me
10 and Reck, that was a picture that, um --

11 Q Let me make sure.

12 MR. GALEOTTI: If we can put up Government Exhibit
13 1030 and make sure that's what the witness is referring to.

14 Q Is this the one, sir?

15 A Yes, sir.

16 Q Okay.

17 A In that picture, Reck was rapping. He was doing a video,
18 and in that video he was doing it with a guy from Bamas that
19 was coming up and rapping also named Horse. Unbeknownst to
20 us, Horse had beef with associate of ours from Pitkin
21 Projects. And because we did a video with Horse from Bama
22 Projects, that got us into they beef.

23 Q Okay, we'll come back to that.

24 Was there a rivalry with Premo at the time?

25 A There always been a rivalry with Premo. We never stopped

Warren - direct - Galeotti

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1 looking for -- we never stopped looking for Premo.

2 Q Why was that?

3 A Because Premo killed Black.

4 Q You testified yesterday that Nitty murdered Black?

5 A Yes, Nitty murdered Black, but comes [sic] to find out
6 that Premo is the one that sent Nitty to murder Black.

7 MR. GALEOTTI: All right, if we can please show the
8 witness and counsel Government Exhibit 1016.

9 BY MR. GALEOTTI:

10 Q Do you recognize what is depicted in Government Exhibit
11 1016, Mr. Warren?

12 A Yes, it is. It's a message from Reck in my phone. I got
13 a message from Recko. He is texting my phone, the other
14 phone.

15 Q Is this a true and accurate text message exchange that
16 you had with Tyshawn Corbett?

17 A Yes, it is.

18 MR. GALEOTTI: Your Honor, Government offers
19 Government Exhibit 1016.

20 MR. GUADAGNINO: No objection, Your Honor.

21 THE COURT: We receive Government Exhibit 1016.

22 (Government's Exhibit 1016 received in evidence.)

23 MR. GALEOTTI: Zoom out, please. Thank you.

24 Q Mr. Warren, starting at the top on March 14th, 2018, and
25 then looking at the message timestamp 4:15:52, can you please

Warren - direct - Galeotti

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1 explain what's going on?

2 A Recko texted me an image of people in a hallway, and in
3 that image is Premo. I asked him: Where do you think that
4 is? He said it was in Brownsville.

5 Q It says Bville on the screen.

6 A Yes, it say Bville and that means Brownsville.

7 I said, hmm, okay, we gonna find this nigga --
8 speaking about Premo. We gonna find Premo.

9 And he told me: Let's get on it.

10 Q What is that? What is that?

11 A What's that? Let's get on it?

12 Q Yes.

13 A He said let's get on trying to find -- let's start
14 finding him.

15 Q For what purpose?

16 A To kill him.

17 MR. GALEOTTI: Can we turn the page, please?

18 Q Is Premo in this photograph?

19 A Yes, he is.

20 MR. GALEOTTI: This is Government Exhibit 1016,
21 page 2.

22 THE COURT: Which one is he?

23 THE WITNESS: He is the first one on the left.

24 THE COURT: All right, thank you.

25 Q Mr. Warren --

Warren - direct - Galeotti

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1 MR. GALEOTTI: You can leave that up.

2 Q -- What ultimately happened with Premo?

3 A After Nitty was killed, the search for Premo continued.

4 I'm not sure when, but Reck find out that Premo was -- Premo

5 -- Premo was paroled to his grandmother house in the Stuy.

6 So --

7 Q What is the Stuy?

8 A Bedford Stuyvesant in Brooklyn. So Reck and a few others

9 was staking out his grandmother house waiting for him to come
10 home.

11 One day he did come home at night. Reck jumped out
12 the car, shot him in his chest. He ran. He chased him down,
13 shot him a couple more times, and he survived.

14 Q Who survived?

15 A Premo.

16 Q Who shot him?

17 A Tyshawn Corbett, Reckless.

18 Q Do you know what injuries Premo, if any, suffered as a
19 result?

20 A I just know of the chest, him being shot in his chest.
21 I'm not sure about the others.

22 Q Was Premo associated with Montauk, the Montauk group?

23 A Yes, he was.

24 Q When did that rivalry start?

25 A That rivalry been going on for years, at least '05.

Warren - direct - Galeotti

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1 Q And that's rivalry was between Montauk and E.A.M.?

2 A Yes, Montauk and E.A.M., but it first started with just
3 M.A.P. and Montauk, and then it flowed into E.A.M.

4 Q Was there a time when the defendant went to Montauk
5 Avenue with a gun?

6 A Yes.

7 Q Was that what you testified to yesterday?

8 A Yes, I did.

9 Q Now, a moment ago you testified about an issue over a
10 music video; is that right?

11 A Yes, sir.

12 Q At a summary level, can you tell me and the jury what
13 happened?

14 A Like I said, after the video, unbeknownst to us, an
15 associate of ours from Pitkin Projects was upset that we did
16 videos with people they consider they opp or rivalries, and we
17 -- they had a day for their projects, Pitkin Projects Day,
18 where me and a few of the guys from our side, Tyshawn, Bowser,
19 Marlo, D, Tryna, Bris, I'm not sure if Chucky was there, but a
20 lot of us was there.

21 Upon us coming there, words was exchanged and one
22 guy from Pitkin Projects pulled out a gun. Dez was there too,
23 pulled out a gun on Dez because he said he was mad for Dez for
24 some -- for some reason.

25 We asked -- we broke it up. We asked what was going

Warren - direct - Galeotti

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1 on, like what's this all about. And in that time, they was
2 explaining that we was dealing with the opps.

3 Before anything went on, I told everybody: Let's
4 go. We out. Get in the cars. So while we get in the cars,
5 Tyshawn is talking to a guy named Fresh.

6 Q Okay, let me pause you.

7 When you went to get in the cars --

8 A Yes.

9 Q -- was the defendant there?

10 A I'm not sure. I'm not sure, sir.

11 Q Do you know if he was there earlier that night?

12 A I'm not sure, sir.

13 MR. GALEOTTI: I'm showing just for the witness and
14 counsel Government Exhibit 310.

15 BY MR. GALEOTTI:

16 Q Mr. Warren, do you recognize what is depicted in
17 Government Exhibit 310?

18 A Yes, this is the picture of that night on Pitkin and
19 Bradford.

20 Q Were you present that night?

21 A Yes, I was.

22 MR. GALEOTTI: Your Honor, the Government offers
23 Government Exhibit 310.

24 MR. GUADAGNINO: No objection.

25 THE COURT: We admit Government Exhibit 310.

Warren - direct - Galeotti

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1 (Government's Exhibit 310 received in evidence.)

2 MR. GALEOTTI: And if we can zoom in on the middle
3 of the screen.

4 BY MR. GALEOTTI:

5 Q Mr. Warren, can you identify the man in the middle of the
6 screen in the white t-shirt and jeans?

7 A Yes, this is Fresh.

8 Q Can you please identify the individual in the black
9 clothing and black shoes?

10 A This is Tyshawn Corbett, also known as Reck.

11 Q What does he appear to doing there?

12 A He is throwing his hands up appearing to fight.

13 Q Okay. After what's depicted here on the screen, were you
14 present for what happened?

15 A I was present for the beginning of what happened, yes.

16 Q Okay. What happened?

17 A After this, after this, Tyshawn and Fresh got into a
18 fight. It wasn't really a fight. Tyshawn knocked him to the
19 ground. And this is when Fresh got up and ran into the
20 projects, which is behind them, retrieved a gun. And in that
21 time, Tyshawn went to his car, which all of us -- when we did
22 have guns, we would have the guns in our hoods, so he took the
23 gun from his hood.

24 Q The hood of a car?

25 A Of a car, of his car, and came back with his gun.

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1 I'm not sure who shot first, but I know they started
2 shooting at each other. And at that time, we was -- all of us
3 was pulling off from that spot.

4 Q What was happening in the area at this time?

5 A Um, at this time, it was just a party for Pitkin
6 Projects.

7 Q Were people out?

8 A Yes, a lot of people.

9 Q Were they out in the area when the shots were fired?

10 A Yes, they was.

11 Q What was Tyshawn Corbett's role in E.A.M. at the time?

12 A He was just E.A.M. He didn't have no status or anything,
13 but he was very known, you know, because his money, he had a
14 lot of money and everybody know he was big time.

15 Q Did he have a family relationship with anyone in E.A.M.?

16 A Yes, he was Chucky's cousin.

17 Q Did you discuss the incident that's depicted here on
18 this -- that you just described, the beginning of which is
19 depicted in Government Exhibit 310, with the defendant?

20 A Yes, I did.

21 Q What did you discuss with him?

22 A I discussed with him what happened that night. We talked
23 about -- we talked about the guy Fresh, but it wasn't -- it
24 wasn't nothing serious. I don't remember him being there
25 after the incident. Also when Tyshawn was on the phone with

Warren - direct - Galeotti

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1 guys from over there, he was very upset. But I did talk to
2 him about that incident, but it wasn't any threats or saying
3 that we was gonna get them because of this. It wasn't
4 nothing, um, at that time.

5 Q Did there come a time where that changed?

6 A Yes, it was.

7 Q Did there come a time where the defendant did want to get
8 Fresh?

9 A Yes. Yes, it is.

10 Q Okay.

11 MR. GALEOTTI: If we could please pull up Government
12 Exhibit 215-A, please.

13 Q Mr. Warren, is the area you described as the Pitkin
14 Projects available on the screen in Government Exhibit 215A?

15 A Yes, it is.

16 Q Can you please indicate on the screen, if it works, using
17 your marker where that's located?

18 A (So marked.)

19 Q Sir, can you please describe for the record what you just
20 indicated on Government Exhibit 215A?

21 A Pitkin Projects is on Pitkin, and they are -- they are
22 between three blocks, which is Miller. It starts with Wyona,
23 down to Van Siclen. So I depicted Pitkin between -- between
24 Wyona and down to Van Siclen. They go by the first, second
25 and third.

Warren - direct - Galeotti

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1 Q Now, I just showed you a photograph in Government Exhibit
2 215 -- I'm sorry, 310.

3 MR. GALEOTTI: If you could put it back.

4 BY MR. GALEOTTI:

5 Q So the photograph in Government Exhibit 310 is a
6 photograph of an incident where Fresh and Tyshawn Corbett are
7 in the screen; is that right?

8 A Yes. This happened in the second. This was between
9 Bradford and Miller.

10 Q Have you ever seen a video of that night?

11 A No, I did not.

12 MR. GALEOTTI: Okay, can we please put up just for
13 the witness and counsel Government Exhibit 7.

14 Q Mr. Warren, do you recognize the individual in this
15 photograph?

16 A Yes, it is. This is Fresh.

17 Q How do you know him?

18 A This is someone that -- he's originally from my block on
19 Elton that started chillin' on Pitkin Ave., so I know him
20 personally. This is also the guy that I assaulted.

21 MR. GALEOTTI: Please put up Government Exhibit 7.

22 Sorry, Your Honor, I apologize, the Government
23 offers Government Exhibit 7.

24 MR. GUADAGNINO: No objection.

25 THE COURT: We admit Government's Exhibit 7.

Warren - direct - Galeotti

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1 (Government's Exhibit 7 received in evidence.)

2 Q Do you know the exact date of when Tyshawn shot at Fresh?

3 A No, sir.

4 MR. GALEOTTI: If we can show the witness Government
5 Exhibit 1017, please.

6 Q Mr. Warren, do you recognize what is depicted in
7 Government Exhibit 1017?

8 A Yes, I do.

9 Q What is it?

10 A This is a message from my phone, and I was talking to
11 Buck.

12 Q Does what's depicted on the screen represent a true and
13 accurate representation of the text message exchange you had
14 with Buck?

15 A Yes, it is.

16 MR. GALEOTTI: Your Honor, the Government offers
17 Government Exhibit 1017.

18 MR. GUADAGNINO: No objection.

19 THE COURT: We receive Government Exhibit 1017.

20 MR. GALEOTTI: Thank you, Your Honor.

21 (Government's Exhibit 1017 received in evidence.)

22 BY MR. GALEOTTI:

23 Q Mr. Warren, focusing up top, there's a message from Other
24 P. Whose phone is that?

25 A That is my phone.

Warren - direct - Galeotti

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1 Q And this is time stamped June 23, 2018, 9:40:50.

2 What did you write here, sir?

3 A I wrote to Buck and ask him: Yo, bro, why your brother
4 was moving like that? He responded: Yo, dead ass, bro. Yo,
5 dead ass, bro, 'cause Fresh, but just told -- Fresh just told
6 him what it is, but Smilez remembered that my real -- that's
7 my real brother, so no move is going to be -- be -- going to
8 being to be bust on bust because if he do -- do you already --
9 because if you do, you already know what's gonna be hitting
10 for. So leave that situation alone. I got that.

11 Then he also respond: And that's if you got any
12 respect for me.

13 Q I will ask you about that.

14 Is Buck the individual you previously identified
15 from Government Exhibit 13?

16 A Yes, it is.

17 Q Is that who you had this text message conversation with?

18 A Yes, it is.

19 Q Now, you were part of this conversation; is that right?

20 A Yes, sir.

21 Q Can you please explain to us what's -- in other words,
22 what's happening in this text message exchange?

23 A After that night, after that night, because --

24 Q I'm sorry, what night?

25 A The night of the shooting between Tyshawn and Fresh,

Warren - direct - Galeotti

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1 there was --

2 Q So the shooting happened before this text message
3 exchange?

4 A Yes, sir.

5 Q Close in time?

6 A Yes, sir.

7 Q Okay. Please go ahead.

8 A Buck is actually from Pitkin Projects, but he is Elite
9 Assassin Milla, so he was in kind of the middle of it because
10 his brother is Pitkin Projects, because he's from Pitkin
11 Projects, but he is Elite Assassin Milla.

12 At this time, I guess it's supposed to be dead or we
13 are in talks of deading the beef.

14 Q Deading the beef between who?

15 A Between Pitkin Projects and Elite Assassin Millas.

16 And, so I went to Pitkin Projects, or I was over
17 there and I was talking to Buck this day, and while I'm
18 talking to him, his brother --

19 Q This day, what do you mean?

20 A 6/23, I remember this vividly, and I was talking to his
21 brother. And his brother was mean mugging me or Reck was
22 eyeballing me, you would say, the whole time I was talking to
23 him. Because of that, and before it went anywhere, I just
24 told Buck: Yo, bro, I'm gonna holla at you. And I left.
25 After I left, I texted him: Yo, what's up with your brother?

Warren - direct - Galeotti

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1 Q So, just for the record, what does it mean to be -- Reck
2 was eyeballing you?

3 A That he looking at me mean, looking at me with envy, he
4 looking at me like he wanted to hurt me.

5 Q Why was that?

6 A Because of the situation that happened not too long ago
7 of the day with Tyshawn and Fresh.

8 THE COURT: So, the brother of Buck is not Fresh, he
9 is some other person?

10 THE WITNESS: Yes, ma'am.

11 THE COURT: And you were talking to --

12 THE WITNESS: I was talking to Buck and his brother
13 is from Pitkin Projects.

14 BY MR. GALEOTTI:

15 Q Is Buck's brother friends with Fresh?

16 A I wouldn't call them friends because he's way older than
17 Fresh. So, it's just like our side. Anything that happened
18 with one of us, it happen with all of us. So that's how they
19 felt.

20 Q I see. His brother, Buck's brother felt some
21 relationship with Fresh?

22 A Yes.

23 MR. GALEOTTI: If we could please play, and I think
24 this is -- we are going to play 15 seconds of this pursuant to
25 a stipulation, assuming the witness can identify it, of

Warren - direct - Galeotti

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1 Government Exhibit 404, please.

2 And, Your Honor, for the record, not a stipulation,
3 this is just to lay -- 15 seconds just to lay the foundation.
4 I misspoke.

5 THE COURT: All right. Yes. Thank you.

6 (Audio playing.) (Audio stopped.)

7

8 (Continued on next page.)

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1 (Continuing.)

2 (Audio plays; audio stops.)

3 BY MR. GALEOTTI:

4 Q Mr. Warren, do you recognize what you heard in Government
5 Exhibit 404, the first 15 seconds?

6 A Yes.

7 Q How do you recognize it?

8 A I heard my voice and I actually remember this call.

9 MR. GALEOTTI: Your Honor, the Government offers
10 Government Exhibit 404, please.

11 MR. GUADAGNINO: No objection.

12 THE COURT: We receive Government Exhibit 404.

13 MR. GUADAGNINO: And along with that, the Government
14 offers a shortened portion as Government Exhibit 404E,
15 previously provided to the defense.

16 THE COURT: E or A?

17 MR. GUADAGNINO: E, your Honor.

18 THE COURT: Any objection to 404E?

19 MR. GUADAGNINO: No objection.

20 THE COURT: We receive Government Exhibit 404 and
21 404E.

22 (Government Exhibits 404 and 404E so marked.)

23 MS. NGAI: Your Honor, we also have jury binders to
24 pass out with transcripts. These transcripts have been
25 provided to defense counsel for review in advance.

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1 THE COURT: Any objection to the transcripts,
2 Mr. Guadagnino?

3 I'll give an instruction to the jury.

4 MR. GUADAGNINO: May I have a moment, your Honor?

5 THE COURT: Yes.

6 (Pause in proceedings.)

7 MR. GUADAGNINO: No objection.

8 THE COURT: Members of the jury, the Government will
9 be giving you transcriptions of the recordings. It is you,
10 the jury, who will decide whether those transcripts accurately
11 transcribe what you hear on the recordings. Ultimately, it's
12 what you hear on those recordings that will govern your
13 deliberations in this case. These transcripts are merely
14 intended to assist you in understanding what is being stated
15 on the recordings, but, again, it is your own ears and
16 understanding that will govern.

17 MR. GALEOTTI: May I provide one to the witness as
18 well, your Honor?

19 THE COURT: Yes.

20 Do you have one for me?

21 MR. GALEOTTI: Yes.

22 THE COURT: What tab?

23 MR. GALEOTTI: Your Honor, this is 404, so the
24 fourth tab.

25 THE COURT: Thank you.

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1 Turn to the tab at number four. Don't look at
2 anything else, please.

3 You said Government Exhibit E, but this says --

4 MR. GALEOTTI: 400E is the portion of the audio
5 clip. 400T is marked just for identification. We're not
6 offering it into evidence, just as a jury aid.

7 THE COURT: Thank you.

8 (Audio plays; audio stops.)

9 Q Mr. Warren, can you please explain what we heard in the
10 first portion of the clip from second zero through 21?

11 A This is a guy named Bris I never met, but it's a regular
12 for someone who just came home, just came home to Blood or
13 just been brought into Blood, to contact the Big Homey and
14 show they identification, let them know who they are.

15 Q Was there a reference to someone named Ray Milla?

16 A Yes, Ray Milla is the one that brought him into EAM, into
17 Blood.

18 Q Did you hear the phrase "jacking under"?

19 A Yes. Jacking under is the same as if someone is a drop.
20 When you say someone is a "drop," that means they're under
21 you. When you say you're jacking under somebody, that means
22 your status is under someone else, so someone else who brought
23 you home.

24 And Ray Milla is the one that brought him home, so
25 he say he's jacking under Ray Milla.

Warren - Direct - Galeotti

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1 Q Did you identify a photograph in court yesterday of Ray
2 Milla?

3 A Yes, I did.

4 Q Did you use the term "DOA"?

5 A Yes, I did.

6 Q What does that mean?

7 A That it's okay or I understand.

8 MR. GALEOTTI: If we can please play starting at
9 second 21.

10 (Audio plays.)

11 MR. GALEOTTI: Pause, please, at 1:33.

12 (Audio stops.)

13 Q Did there come a time when you spoke to someone other
14 than Bris Milla?

15 A Yes. Right now, I am speaking to Ray Milla.

16 Q What's reflected at timestamp 1:33, is that when you were
17 speaking to Ray Milla?

18 A Yes, sir.

19 Q Did you hear the phrase "everything's foreign"?

20 A Yes, sir.

21 Q What does that mean?

22 A This is a calling when you hear somebody saying fume. I
23 told you earlier that some people say that's my music, some
24 people say you know the sound, and some people say everything
25 foreign.

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1 MR. GALEOTTI: Please play starting at 1:33.

2 (Audio plays.)

3 MR. GALEOTTI: Pausing at 1:56.

4 (Audio stops.)

5 Q What did you hear, Mr. Warren?

6 A He's stating -- I asked him did he get him out of here,
7 referring to Fresh.

8 Q Let me just make sure we know who is who here.

9 A Okay.

10 Q What did you ask?

11 A I asked Ray Milla did he get Fresh out of there.

12 Q What do you mean by that?

13 A Meaning getting out of there is if we are living in the
14 same house or the same unit on Rikers Island, when I say get
15 somebody out of there or you got someone out of there, that
16 means you got them out of the house. That could be beat up,
17 that could be trying to cut them, whichever way -- that could
18 mean even pack him up and just saying, You can't live here.

19 He said he got him out of there.

20 Q Did you want him to get him out of there?

21 A Yes, I did.

22 Q Why is that?

23 A Because he shot at Reck and that's my man. I felt like
24 he violated.

25 Q Who violated?

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1 A I felt like Fresh violated by shooting at a friend of
2 mine and also one of the homies.

3 Q What do you mean by "one of the homies"?

4 A An EAM member.

5 MR. GALEOTTI: Play from 1:56, please.

6 (Audio plays.)

7 MR. GALEOTTI: Pause there, please.

8 (Audio stops.)

9 Q From 1:56 to 2:29, Mr. Warren, what happened in that
10 portion of the call?

11 A He was explaining to me -- well, I was explaining to him
12 after he told me he did get him out of there, that after he
13 called me and asked me do I want him out of there and I agreed
14 for him to be out of there, I called Tyshawn and told him what
15 I did. Tyshawn told me that he really didn't want that to
16 happen because he really wanted to squash the beef before it
17 went anywhere.

18 Q Squash the beef with who?

19 A With Pitkin Projects.

20 But the call was already made. He wasn't mad at it,
21 he was just like damn, because it stopped it from going
22 anywhere else.

23 THE COURT: Mr. Tyshawn wanted to calm something
24 down outside?

25 THE WITNESS: Yes. After the shooting, there was

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1 talk because Pitkin Projects is really associates of ours. We
2 are friends with them. So, after all of that, he wanted to
3 calm it down before it went anywhere else, to get any
4 aggressive.

5 Q After Tyshawn and Fresh had shot at one another?

6 A Yes, sir.

7 MR. GALEOTTI: If we could play from 2:29 on,
8 please.

9 (Audio plays.)

10 MR. GALEOTTI: Now stopping at 3:08.

11 (Audio stops.)

12 Q Did you hear the phrase "took it on the hop"?

13 A Yes.

14 Q What does that mean?

15 A That means you let someone assault you or violate you and
16 you didn't respond back or you didn't revenge someone
17 attacking you.

18 Q And, so, in the context of this conversation, what was
19 explained to you?

20 A So, he explained that he punched him in his face and --

21 Q Who punched who?

22 A Ray Milla punched him in his face.

23 Q Who?

24 A Sorry. Ray Milla punched Fresh in the face, and he ran
25 to the gate and didn't try to fight back.

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1 This is the meaning of taking it on the hop.

2 Q Did he reference 50-shot shooter?

3 A Yes, I heard him say 50-shot shooter. He's explaining
4 that's who he is, like, this is what EAM do, this is what AKs
5 do.

6 Q And then at the end -- well, never mind.

7 MR. GALEOTTI: We could go on from 3:08, please.

8 (Audio plays.)

9 MR. GALEOTTI: Please pause.

10 (Audio stops.)

11 MR. GALEOTTI: We paused at 3:27, for the record.

12 Q Just with respect to the conversation regarding -- well,
13 did the conversation regarding Fresh and Ray Milla continue?

14 A Did the conversation regarding?

15 Q Did you hear further discussion -- just withdrawn.

16 When you said "don't get no pass," what does that
17 mean?

18 A So, when I said that, you know, when I did talk to him,
19 he was explaining -- when I did talk to Reck, he was
20 explaining that he wanted to dead the beef. I felt like when
21 shots is fired, there's no deading no beef. Like, that's the
22 biggest violation of it all. What if it would have hit him?
23 He could have been dead.

24 So, when he's saying that he wanted to try to dead
25 it, I'm like he don't get no pass, we can't just brush

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1 something like this under the rug, and that Tyshawn is not
2 just one of the little homies or a regular guy, he's somebody
3 big, he's a name, a big name. So, if he would have shot Reck,
4 he would have got status or he would have got a name for that.

5 MR. GALEOTTI: Rewind just two or three seconds,
6 maybe, to 3:24, about. And starting at 3:24, please.

7 (Audio plays.)

8 MR. GALEOTTI: Pause, please.

9 (Audio stops.)

10 Q Is there a reference to the Defendant?

11 MR. GALEOTTI: We paused at 3:33, for the record.

12 Q Was there a reference to the Defendant in that portion
13 that you just heard?

14 A Yes, sir.

15 Q What happened?

16 THE COURT: What is the reference, just for
17 clarification?

18 THE WITNESS: He was just asking --

19 Q Sorry, how did he -- who were you speaking with on the
20 call?

21 A Ray Milla.

22 Q And how did he refer to the Defendant?

23 A Chucky. He asked what was up with Chucky. He was
24 checking on him.

25 MR. GUADAGNINO: Objection, your Honor. Hearsay.

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1 MR. GALEOTTI: Your Honor, it's not for the truth.

2 THE COURT: The jury should be instructed that
3 hearsay prohibits out-of-court statements being offered for
4 the truth. The Government is offering this for another
5 purpose to explain relationships and knowledge among various
6 people.

7 So, the objection is respectfully overruled.

8 Q Sorry. Proceed, Mr. Warren.

9 A So, Ray Milla was asking what's up with Chuck? He's
10 friends with me and Chuck. Well, I don't want to say friends,
11 but he's a part of EAM and he knows who Chuck is.

12 So, he was asking what was up with Chuck, seeing
13 what was going on with him, and I explained to him that he's
14 good and that we both thought that we was gonna be locked up
15 because of parole, we both going on parole together.

16 MR. GALEOTTI: Play from 3:33, please.

17 (Audio plays; audio stops.)

18 MR. GALEOTTI: If we could please pull up what's in
19 evidence as Government Exhibit 12A, please.

20 (Exhibit published to the jury.)

21 Q Mr. Warren, who is on the screen in Government Exhibit
22 12A?

23 A This is Ray Milla.

24 Q Is that the person that you were speaking with in
25 Government Exhibit 404 that we just listened to?

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1 A Yes, sir.

2 MR. GALEOTTI: If we could pull up Government
3 Exhibit 407, please. And we're going to play the first
4 fifteen seconds for authentication purposes.

5 (Audio plays.)

6 MR. GALEOTTI: Pause, please.

7 (Audio stops.)

8 Q Mr. Warren, do you recognize the call in Government
9 Exhibit 407?

10 A Yes. This is Ray Milla and me again.

11 Q Were you present on that call?

12 A Yes, I was.

13 MR. GALEOTTI: Your Honor, the Government offers a
14 shortened portion of that, Government Exhibit 407E.

15 THE COURT: 407E?

16 MR. GALEOTTI: Yes, your Honor.

17 THE COURT: Any objection to 407E?

18 You're not moving in 407; is that correct?

19 MR. GALEOTTI: Correct, your Honor.

20 THE COURT: Any objection to 407E?

21 MR. GUADAGNINO: One moment, your Honor, I'm sorry.

22 No objection.

23 THE COURT: We receive in evidence Government
24 Exhibit 407E.

25 (Government Exhibit 407E so marked.)

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1 MR. GALEOTTI: Your Honor, the Government is not
2 offering but is using for demonstrative purposes Government
3 Exhibit 407T, which is at tab seven in the binder passed out
4 to the Court, the Defendant, and the jury.

5 THE COURT: All right. Please turn to tab seven.

6 MR. GALEOTTI: And if we could please play from
7 there. Thank you.

8 (Audio plays.)

9 MR. GALEOTTI: Pause, please.

10 (Audio stops.)

11 MR. GALEOTTI: We paused 13 seconds in to GX 407E.

12 Q Mr. Warren, are you speaking on that portion of the call?

13 A Yes. I'm speaking to Ray Milla and we're talking about
14 Chucky.

15 Q What were you talking about?

16 A I guess he asked for me -- asked about Chucky again, and
17 I'm explaining to him what I said earlier about Parole not
18 wanting him to be in East New York so they got him going
19 through shelters and he's trying to find him a spot right now.

20 Q Is that when he went to Van Siclen?

21 A Yeah, if he wasn't in the shelters, he was at Van Siclen,
22 yes.

23 MR. GALEOTTI: Okay. Please play.

24 (Audio plays.)

25 MR. GALEOTTI: Pause, please.

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1 (Audio stops.)

2 MR. GALEOTTI: Pausing at timestamp 00:50.

3 Q Were you speaking on that portion of the call,
4 Mr. Warren?

5 A Yes, I was.

6 Q What were you speaking about?

7 A I was explaining to him an incident that happened in East
8 New York with an Elite Assassin Milla member named Rico
9 between -- this happened on Shepherd between Glenmore and
10 Pitkin, where someone shot at Rico and another associate from
11 our neighborhood. It wasn't for Rico, it was for the other
12 guy that he was with. The other guy got shot. And I was
13 explaining because of that, the 'hood was hot, meaning that
14 there was a lot of police around.

15 Q Was Ray Milla in jail at the time?

16 A Yes, he was.

17 Q Why were you explaining this to him?

18 A Because communication is key. It's always right to let
19 everybody know what's going on. He asked what's going on with
20 the 'hood and that's what brought it up.

21 THE COURT: And you were not in jail; is that
22 correct?

23 THE WITNESS: Yes, ma'am. I was home.

24 MR. GALEOTTI: Starting at timestamp 00:53.

25 (Audio plays.)

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1 MR. GALEOTTI: Pause, please.

2 (Audio stops.)

3 MR. GALEOTTI: Pausing at 1:05.

4 Q Did you continue speaking to Ray Milla in that portion of
5 the call, Mr. Warren?

6 A Yes, I did.

7 Q Can you please explain to us what happened in that
8 portion of the call?

9 A He asked me what was up with A block.

10 Q What's "A block"?

11 A A block is Ashford.

12 And I'm explaining to him that right now, that the
13 block was quiet, that nobody was really on that block, nobody
14 really selling no drugs on that block, and I was explaining to
15 him that that's Chucky's block.

16 Q What do you mean that's Chuck's block?

17 A Anything that goes on on that block goes through Chucky.
18 That's Chucky's block. He's the boss of that block.

19 Q Did you say it's still Chuck's block?

20 A Yes, I did.

21 Q What does that mean?

22 A Even though it's quiet, even though Chucky can't go to
23 East New York, even though Chucky don't even be on A block no
24 more, it's still considered Chucky's block.

25 MR. GALEOTTI: Can you please play from 1:05,

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1 please?

2 (Audio plays.)

3 MR. GALEOTTI: Pause, please.

4 (Audio stops.)

5 MR. GALEOTTI: Pausing at 1:38, for the record.

6 Q Did your conversation in that portion of the call with
7 Ray Milla continue, Mr. Warren?

8 A Yes, sir.

9 Q Can you please explain what happened in that portion of
10 the call?

11 A Ray Milla was asking me can he go to Ashford, or A block,
12 to set up shop, as in sell drugs on that block. I explained
13 to him that's really a Chucky call. But Chucky -- I'm not
14 sure if I talk to Chucky before this or not, but I stated in
15 this comment that Chucky already said that he can go to
16 Ashford to sell drugs and him --

17 Q That who could go to Ashford?

18 A That Ray Milla could go to Ashford and sell drugs.

19 Q Did the Defendant approve that?

20 A That's what I said. I don't remember if I had this
21 conversation. But in this voice call, I did say that Chucky
22 said he could go to the block.

23 Q Could you have approved that?

24 A No, I cannot.

25 Q Could anyone besides the Defendant, Chucky, have approved

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1 that?

2 A No.

3 Q Anything else happen on that portion of the call, sir?

4 A I also explained to him that if he do go to the block,
5 it's all on him, it's not like before. I'm explaining before
6 we had stash spots where we could be get money or we could put
7 guns and stuff like that, we had trap houses and stuff like
8 that on that block. At this time, there's no stash houses
9 there, there's no trap houses anywhere that he can go. So, if
10 he goes to this block, he'll be selling drugs out in the open.

11 Q What time period were you referring to where there were
12 stash houses and the other things you just described?

13 A I'm talking about earlier days, from earlier days than
14 2018. We can say 2015, '16, even '17, but earlier days. And
15 before then, I did my bid, 2010, 2009, and any other time I
16 know from Ashford there was always a trap house or a stash
17 house we could go to.

18 Q And who ran A block at that time when there was a stash
19 house and trap house?

20 A Chucky.

21 Q Were there guns stashed around the street on Ashford at
22 that time?

23 A Yes, sir, there was.

24 MR. GALEOTTI: If you could please play from 1:38
25 on.

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1 (Audio plays.)

2 MR. GALEOTTI: Pause, please.

3 (Audio stops.)

4 MR. GALEOTTI: And pausing at 1:54, for the record.

5 Q Mr. Warren, can you please describe that portion of the
6 call?

7 A He's saying that if he able to set up on A block, is
8 everything still gonna be okay. I told him he good. Chucky
9 the one that presented him to A block and said that he's okay
10 to be there, so he's gonna be okay.

11 MR. GALEOTTI: Please continue from 1:54.

12 (Audio plays.)

13 MR. GALEOTTI: Pause.

14 (Audio stops.)

15 Q Mr. Warren, what did you say in that portion of the call?

16 MR. GALEOTTI: And we paused at 1:58.

17 A I'm stating to him if anybody is the one to say that
18 you're good on that block, it would be Chucky and no one else.

19 MR. GALEOTTI: Ms. Wissel, if you could please play
20 from there.

21 (Audio plays; audio stops.)

22 MR. GALEOTTI: And we've played through 2:45, the
23 end of GX 407E.

24 THE COURT: Mr. Galeotti, have you established any
25 time frames for these recordings?

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1 MR. GALEOTTI: Your Honor, we can if we can do so
2 subject to connection.

3 THE COURT: Is there any objection to this,
4 Mr. Guadagnino?

5 I didn't hear anything about when this call took
6 place.

7 MR. GALEOTTI: Yes, your Honor, we have the record
8 which we'll put in later. We can offer it subject to
9 connection now.

10 THE COURT: All right.

11 MR. GUADAGNINO: Yes, we would like to establish a
12 time frame as well, your Honor.

13 THE COURT: So, no objection?

14 MR. GUADAGNINO: Well, we only object if the time
15 frame cannot be established. If the Government can establish
16 a time frame, then we have no objection.

17 THE COURT: They're representing that they can.
18 Correct?

19 MR. GALEOTTI: Yes, your Honor.

20 THE COURT: All right.

21 MR. GALEOTTI: If we could please show Government
22 Exhibit 407A.

23 (Exhibit published to the jury.)

24 Q Mr. Warren, do you know about what time period you had
25 this call with Ray Milla?

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1 A This is 2018 around -- I want to say July or end of June,
2 but definitely around those two because it's before the
3 shooting.

4 MR. GALEOTTI: We can take this down.

5 Q When you say "before the shooting," what shooting do you
6 mean?

7 A The shooting, what we did speak about, when I did shoot
8 Fresh.

9 Q Okay. So, to the best of your recollection, personally,
10 from yourself, you just testified to it, but so the record is
11 clear, approximately when did this call with Ray Milla take
12 place?

13 A This is before I shot Fresh, which was July, like, the
14 end of July, if I'm not mistaken. And this is after -- this
15 is after I've talked to -- this is after I've talked to Buck
16 in that message, which was June 23, if I'm not mistaken. So,
17 it's between those two times.

18 MR. GALEOTTI: And if we could play the first 15
19 seconds of Government Exhibit 410 for authentication purposes.

20 (Audio plays.)

21 MR. GALEOTTI: Pause there.

22 (Audio stops.)

23 THE COURT: And this is Government Exhibit 410E, I
24 should clarify.

25 Q Mr. Warren, do you recognize Government Exhibit 410E?

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1 A Yes, this is me on the phone again with Ray Milla.

2 Q Do you know about what time period this was?

3 A This is July, this is definitely July.

4 THE COURT: Of 2018?

5 THE WITNESS: Yes, ma'am.

6 Q Do you recall personally having a call with Ray Milla
7 around this time?

8 A Yes, I do.

9 MR. GALEOTTI: Your Honor, the Government offers
10 Government Exhibit 410E.

11 MR. GUADAGNINO: No objection.

12 THE COURT: We receive Government 410E.

13 (Government Exhibit 410E so marked.)

14 MR. GALEOTTI: And your Honor, we're not offering
15 it, but we do have in the binder which everybody has at
16 Government Exhibit 410T for identification purposes, tab ten
17 in the binder, a demonstrative.

18 THE COURT: Thank you.

19 (Audio plays.)

20 MR. GALEOTTI: Pause there.

21 (Audio stops.)

22 Q Mr. Warren, what happened on that call that we just
23 listened to at Government Exhibit 410E?

24 A Ray Milla called my phone and asked -- and reminded me
25 about the night of the shooting with Fresh and Tyshawn. He

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1 asked me, you know, Remember that night on Pitkin Avenue?

2 I knew he was talking about. He also stated that
3 Ray Milla -- I mean that Fresh -- well, that the guy from that
4 night was in the house with him or the unit he was in. I said
5 yeah, I know, because I already heard that he got locked up.
6 Then that's when --

7 Q I'm sorry, can you clarify who --

8 A Sorry. Ray Milla explained to me about that night, and I
9 said, I know that Fresh got locked up that night.

10 By me knowing, I told him, You talking about Fresh?

11 He said, Yeah, yeah, exactly, that's exactly who I'm
12 talking about. Ray Milla said, That's exactly who I'm talking
13 about.

14 Then he continued to ask me what was the verdict or
15 what's up with him. I thought about it. I thought about it
16 and I said, Fuck it. Get him out of there.

17 Which is what we spoke about earlier, to get him out
18 of the unit.

19 Q So, did Ray Milla follow your order?

20 A Yes, he did.

21 Q Are you familiar with the phrase "push the button"?

22 A Yes, I am.

23 Q What does it mean?

24 A When somebody with status in a gang give the order, push
25 the button for something to happen to someone else.

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1 Q Was Fresh assaulted at the direction of EAM leadership?

2 A Yes, he was.

3 MR. GALEOTTI: If we could show -- let's pause.

4 Q What happened after that, Mr. Warren?

5 A After that happened -- after that happened, Fresh came
6 home.

7 Q Do you know about when?

8 A This is in July 2018, probably a day after this call.

9 Q So, just to get the time period clear, is that only --
10 about how long after he and Tyshawn shot at each other was he
11 back out of prison?

12 A That same week. Yeah, that same week or the next week.
13 I know it was close.

14 Q Okay.

15 A But, well, before Fresh came home, Fresh must have called
16 the town and state that he was popped on, that Fresh was
17 popped on. He stated that he was popped on in the housing
18 unit.

19 MR. GUADAGNINO: Objection, your Honor.

20 THE COURT: Sustained.

21 Q So Mr. Warren, let me just -- you're just describing a
22 conversation that you had?

23 A Yes.

24 Q Who did you have it with?

25 A So, I talked to Tyshawn, and Tyshawn explained to me that

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1 B Rap --

2 Q Who is B Rap?

3 A B Rap is somebody that's from Pitkin Projects, but he's
4 cool with our side and he's cool with Pitkin Projects' side.
5 He's from Pitkin Projects, but he used to be on our side too.

6 Q What's "our side"?

7 A Our side is MAP side, A block side, EAM side. He used to
8 be EAM also.

9 And that is Fresh right-hand man. So, Tyshawn calls
10 me and let me know that he talked to B Rap. And B Rap
11 explained to him that Fresh got popped on --

12 MR. GUADAGNINO: Objection as to what someone else
13 explained.

14 THE COURT: I'm going to sustain. He's recounting a
15 conversation from B Rap from Pitkin.

16 THE WITNESS: Yes, ma'am.

17 THE COURT: To Mr. Corbett, right, who then conveys
18 this to Mr. Warren.

19 MR. GALEOTTI: This is a subject of the motion, your
20 Honor.

21 THE COURT: Pardon me?

22 MR. GALEOTTI: This is a subject of the motion.

23 THE COURT: Well, I can talk to you about it. We
24 can give the jurors a lunch break at this time.

25 Would you like an hour?

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1 (A chorus of yeses.)

2 MR. SIEGEL: We'll give you an hour, so return to
3 the jury room at 1:20, please.

4 Don't talk about the case with anybody. Leave
5 everything on your chairs, including your notebooks, facedown.
6 Leave the binders there as well. Thank you.

7 (Jury exits; in open court.)

8 THE COURT: You can give him lunch now.

9 (Witness leaves the stand.)

10 THE COURT: Have a seat.

11 My understanding was the witness was testifying that
12 B Rap, who is from Pitkin and not necessarily an EAM member,
13 is telling Tyshawn Corbett, who is an EAM member, about a
14 conversation that he had with someone from Pitkin. So, I
15 think in order for this statement of this individual to be
16 admissible, you would have to establish that he is part of the
17 EAM enterprise.

18 This is my issue about the whole tenor of the
19 evidence so far: There's a lot of testimony about
20 Mr. Warren's conversations with other people, actions with
21 other people, being present at confrontations with other
22 people. And I understand that I made a ruling that some of
23 this could be helpful to establishing relationships, the way
24 the alleged enterprise operated, et cetera. But it's very
25 seldom that there's actually a reference to Mr. Smothers, his

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1 knowledge, his approval, his say-so about pushing the button
2 to take action on someone within a correctional facility, et
3 cetera, et cetera.

4 You asked a general question, Does the leadership at
5 EAM have to approve pushing the button on someone?

6 And he said, Yes.

7 But the only testimony was that he, Mr. Warren, gave
8 the order. There's no reference to Mr. Corbett -- I'm sorry,
9 to Mr. Smothers.

10 So, my concern is there's just a whole lot of
11 evidence coming in and we don't even know where Mr. Smothers
12 is for most of these -- most of the things he's testifying
13 about or what his role is or what communications are being
14 made. Mr. Warren says he's talking to Ray Milla, keeping him
15 informed, but I'm not hearing that he's talking to
16 Mr. Smothers, keeping him informed.

17 So, I'm just wondering if we could shorten this
18 somewhat if you were to avoid some of the incidents that don't
19 seem to touch on Mr. Smothers. There also seems to be some
20 repetition and you're going back and covering ground that you
21 covered yesterday. I just would like to move it forward.

22 MR. GALEOTTI: A few things, your Honor.

23 First of all, Mr. Smothers is charged with
24 racketeering conspiracy.

25 THE COURT: Yes.

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1 MR. GALEOTTI: And the charge charges him with
2 agreeing to be part of an enterprise where he knew, and he
3 knew upon joining the enterprise, that other members would
4 commit two or more predicate acts. So, even if he's not
5 involved in a particular act, that is direct evidence of the
6 charged crimes --

7 THE COURT: I understand that, but we don't know
8 where Mr. Smothers is, whether he's even being informed. He's
9 not necessarily involved, I understand that. He's not
10 necessarily present.

11 But what if all of this is reasonably foreseeable to
12 him?

13 MR. GALEOTTI: I can tell you. And, your Honor, we
14 didn't cover this yesterday.

15 Mr. Smothers was part of a murder conspiracy to
16 murder Fresh, who is the individual that we're speaking about.
17 It happens shortly after the testimony that we're at now.

18 Frankly, I can skip this question, it's not a
19 problem. If this is going to come up again, though, that's
20 why I was thinking a sidebar might be appropriate.

21 Essentially, what happens is after this assault,
22 Fresh shoots at Mr. Smothers and the testifying witness, and
23 in response they agree to kill Fresh. So, we're laying the
24 foundation for that, your Honor.

25 THE COURT: So Fresh has a fight with Mr. Tyshawn

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1 Corbett. They fire weapons at each other. Fresh is put in
2 jail. Mr. Warren orders that someone push a button on him,
3 whatever. And then Fresh comes home and Ray says he's coming
4 home soon.

5 Correct?

6 MR. GALEOTTI: Yes, your Honor.

7 THE COURT: And Mr. Warren is out already.

8 MR. GALEOTTI: Correct, your Honor.

9 THE COURT: And Mr. Smothers is not in East New
10 York. He's looking for a place to live in Williamsburg or a
11 shelter or somewhere away from East New York because he's not
12 allowed to be there, correct?

13 MR. GALEOTTI: Correct. He's not in custody, your
14 Honor.

15 THE COURT: Okay.

16 MR. GALEOTTI: So, on June 10, 2018, Fresh and
17 Tyshawn Corbett shot at each other. Thereafter, in late June
18 there were calls where Fresh was in custody, he was assaulted
19 in custody by EAM members in retaliation for the shooting with
20 EAM member Tyshawn Corbett. Thereafter, shortly thereafter,
21 Fresh gets out of jail, and on July 22 he shoots at
22 Mr. Smothers and Mr. Warren at a party. After that, Fresh
23 shoots at Mr. Smothers and Mr. Warren, Mr. Smothers and
24 Mr. Warren agree to murder Fresh.

25 THE COURT: Okay.

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1 MR. GALEOTTI: He's subsequently shot and paralyzed.

2 THE COURT: It was just occurring to me that some of
3 this was just very plotting and time consuming and he's
4 testifying about a lot of things, but I'm not, as I said,
5 hearing a lot about Mr. Smothers being advised or giving
6 approval.

7 The question about leadership having to approve
8 pushing a button on someone, he said yes, but I'm assuming the
9 only inference one could draw from that is he's the second in
10 command and he's giving the order to push the button on this
11 person.

12 MR. GALEOTTI: Yes, I think what the foundation --

13 THE COURT: And this has nothing to do with
14 Mr. Smothers.

15 MR. GALEOTTI: Okay, but, your Honor, first of all,
16 even putting aside anything else, just in the story where
17 there's a motive about what happens for the Defendant to
18 become part of a murder conspiracy, even if this wasn't
19 charged as a RICO conspiracy, it's relevant in that context.
20 It's the reason why the victim shoots at the Defendant, who
21 then agrees to murder Fresh in response.

22 And, so, even if the Defendant didn't know about
23 that portion, it's still relevant evidence.

24 THE COURT: I accept that this is to come, it hasn't
25 been before us yet.

Proceedings

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1 MR. GALEOTTI: Yes, your Honor.

2 THE COURT: I'm saying in the interest of maybe
3 moving the case along, you could think about what you really
4 need. I'm not trying to tell you how to try your case, but
5 this does seem to be a lot about people and incidents other
6 than Mr. Smothers.

7 MR. GALEOTTI: I understand, your Honor. We're
8 actually wrapping up with this witness relatively shortly.
9 And, frankly, this is the last real factual episode. We'll
10 cover Mr. Warren's agreement and so forth, but this is
11 actually the last piece of factual testimony.

12 THE COURT: All right.

13 MR. GALEOTTI: And, frankly, the most important.

14 THE COURT: All right. So, let's all have a lunch
15 break, then, and we'll return to the courtroom and carry on as
16 soon as we can.

17 MR. GALEOTTI: Thank you, your Honor.

18 THE COURT: All right, thanks.

19

20 (Luncheon recess taken; continued on the next page.)

21

22

23

24

25

Proceedings

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1 AFTERNOON SESSION

2 (In open court; jury not present.)

3 THE COURT: All right. Before we bring the jury
4 back, I want to advise the parties that I have arranged for, I
5 hope, with a warden to have Mr. Smothers receive his evening
6 meal.

7 It will require, sir, that you sign a document every
8 day when you return that you have been offered a meal and that
9 you have either declined it or accepted it. All right, sir?

10 It is going to go directly to the warden.

11 THE DEFENDANT: Thank you.

12 MR. GUADAGNINO: Thank you, Your Honor.

13 THE COURT: You're welcome. If you have any other
14 issues, please let me know.

15 THE DEFENDANT: All right.

16 THE COURT: Are we ready to put Mr. Warren back on
17 the stand?

18 MR. GALEOTTI: Yes, Your Honor.

19 THE COURT: Thank you.

20 (Witness resumes stand.)

21 (The jury enters the courtroom.)

22 THE COURT: All right. All jurors are present.
23 Please have a seat.

24 Mr. Warren, sir, you are still under oath.

25 THE WITNESS: Yes.

Warren - direct - Galeotti

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1 THE COURT: You may continue.

2 MR. GALEOTTI: Thank you, Your Honor.

3 DIRECT EXAMINATION (Continuing)

4 BY MR. GALEOTTI:

5 Q Good afternoon, Mr. Warren.

6 A Good afternoon.

7 Q Mr. Warren, to the best you can, please try to listen to
8 my question and answer just my question, if you will, sir.

9 A Okay, sir.

10 Q Okay. In late 2017 and early 2018, was the defendant in
11 custody?

12 A I'm not sure.

13 Q Do you think you ever saw him in 2017, 2018?

14 A Yes, I did.

15 MR. GALEOTTI: Can we please show just to the
16 witness and counsel Government Exhibit 1035, please. If you
17 can blow that up.

18 Q Mr. Warren, do you recognize what is depicted in
19 Government Exhibit 1035?

20 A Yes, I do.

21 Q How do you recognize it?

22 A Hum, because of the picture, from the pictures that's
23 shown, thumbnail.

24 Q Where is this message taken from?

25 A It's from my phone.

Warren - direct - Galeotti

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1 MR. GALEOTTI: Your Honor, the Government offers
2 Government Exhibit 1035.

3 MR. GUADAGNINO: No objection.

4 THE COURT: We receive Government Exhibit 1035.

5 (Government's Exhibit 1035 received in evidence.)

6 Q If we could please just focus on the date for a moment.

7 Mr. Warren, what is the date that says next to the
8 "created" line?

9 A December 4, 2017.

10 MR. GALEOTTI: Okay. And if we could please move to
11 page 2.

12 Q Sir, do you recognize this photograph?

13 A Yes, I do.

14 Q Where was it taken?

15 A Brooklyn Bridge Park.

16 Q Are you in this photograph?

17 A Yes, I am.

18 Q Where is that?

19 A I am the -- the second person from the right.

20 Q Do you recognize anyone else in this photograph starting
21 in the middle?

22 A I recognize everybody here, but Chucky is bending over.
23 He has the white cap on backwards.

24 MR. GALEOTTI: Thank you. You can take that photo
25 down.

Warren - direct - Galeotti

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1 THE COURT: When was this photo taken, do you know?

2 THE WITNESS: Yes, this photo was taken in 2017,
3 August. This was my all -- this was -- this was a cookout
4 that I had. I want to say my birthday party in 2017, so this
5 was August of 2017.

6 THE COURT: And the cookout was in Brooklyn Bridge
7 Park?

8 THE WITNESS: Yes, ma'am.

9 THE COURT: Thank you.

10 Q Did you testify that there was a time where the defendant
11 was not supposed to go to East New York?

12 A Yes, sir.

13 Q Did you, nevertheless see him in East New York?

14 A He still was in East New York.

15 Q Did you testify about a house on Van Siclen?

16 A Yes, sir.

17 Q What neighborhood is that in?

18 A East New York.

19 Q What did the defendant do at the house in Van Siclen?

20 A He sold drugs.

21 Q Okay. Did you see him at that house?

22 A Yes, sir.

23 Q Did you see him in East New York?

24 A Yes, I did.

25 MR. GALEOTTI: Can we please put up --

Warren - direct - Galeotti

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1 THE COURT: What was the timeframe for that, sir?

2 THE WITNESS: This can be -- this is 2018.

3 THE COURT: All right. Thank you.

4 MR. GALEOTTI: Can we please put up Government
5 Exhibit 7, which is in evidence.

6 Q Mr. Warren, who is the individual depicted in Government
7 Exhibit 7?

8 A This is Fresh.

9 Q Did there come a time when Fresh shot at you and the
10 defendant?

11 A Yes, there was.

12 Q When was that?

13 A Hum, this was 2018, July.

14 Q Where did he shoot at you? Where physically were you?

15 A I was in East New York and I was at a cookout, a backyard
16 cookout, house party.

17 MR. GALEOTTI: If we could please show just to the
18 witness and counsel Government Exhibit 1018, please.

19 Q Mr. Warren, do you recognize what is depicted in
20 Government Exhibit 1018?

21 A Yes, I do.

22 Q How so?

23 A I see my number and I see the person that was contacting
24 me.

25 Q Is this a text message that you, in fact, received?

Warren - direct - Galeotti

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1 A Yes, sir.

2 MR. GALEOTTI: Your Honor, the Government offers
3 Government Exhibit 1018 please.

4 MR. GUADAGNINO: No objection.

5 THE COURT: We admit Government Exhibit 1018.

6 (Government's Exhibit 1018 received in evidence.)

7 Q Now, first, Mr. Warren, up in participants, who
8 participated in this message?

9 A This is me and friend of mines named Angel.

10 Q Now, to the right, looking at the timestamp, did you
11 receive this text message?

12 A Yes, I did.

13 Q When?

14 A July 11, 2018.

15 Q What's what does the message say?

16 A Housewarming book out. She meant cookout. Info address,
17 752 Pine Street between Loring Ave and Stanley Ave.

18 And A train to -- it don't say train, but A to
19 Euclid Ave, or the 3 train -- it don't say train -- but 3
20 train to New Lots Ave, July 21st from 6:00 p.m. to 8:00 a.m.,
21 I mean, to 1:00 a.m., free food, drinks for sale.

22 Q Did you attend the party described in Government Exhibit
23 1018?

24 A Yes, I did.

25 Q What happened that night?

Warren - direct - Galeotti

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1 A That night, while I was attending, when I first came, it
2 was a good crowd; it was a good crowd, and it was a lot of
3 girls there, so I called Chucky to come and attend the party
4 with me.

5 Before Chucky got there, there were guys there that
6 looked familiar. But I wasn't too sure if I knew them. But I
7 had a bad feeling, so I thought they was guys from Pitkin
8 projects. So I contact a friend that know them named Bliz
9 asking him -- I did a bad description.

10 I asked him, hum, the light-skinned guy from Pitkin
11 projects, what's his name? He said, I don't know what ya
12 talkin' about, bro. Like light-skinned guy? That could be
13 anybody. Forget it. Forget it. I just thought these guys
14 were from by Pitkin projects.

15 But I'm at a cookout, just let you know. He said,
16 All right.

17 Q Who did you say this to?

18 A I said this to Bliz after I called him.

19 Q What happened next?

20 A Next Angel friends asked me to --

21 Q Who is Angel?

22 A Angel is the one -- it's her housewarming cookout. Her
23 friend asked me can I get some weed from somewhere. So I left
24 the party to get weed. I probably had some weed. I'm not
25 sure where I got it from, but I didn't call Chucky to get

Warren - direct - Galeotti

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1 weed.

2 Upon me coming back to the party, Chucky was already
3 there with a friend of ours named Travis. We was there 15
4 minutes and Fresh walks through the backyard, looks at us,
5 stairs at us.

6 At that time, I smile, hum, Chucky's looking at him,
7 and he goes to the crowd of boys I was suspicious about.

8 Q Who was Chucky looking at?

9 A Chuckling was looking at Fresh.

10 MR. GUADAGNINO: Objection. Speculation of what he
11 was looking at.

12 Q Did you see --

13 THE COURT: He's asking what he observed.

14 The objection is overruled.

15 Did you observe Chucky or Mr. Smothers looking at
16 anyone?

17 THE WITNESS: Yes, ma'am.

18 Q Who did you observe the defendant looking at?

19 A I observed Chucky looking at Fresh. He stopped right in
20 front of us. We both was looking at him. Travis, I know he
21 was oblivious. He's not from the hood or anything, so he
22 don't know what's going on, but me and Chucky knew what was
23 going on. We looked at each other and was like -- we smiled
24 and got on the phone and started, you know, calling some of
25 the guys.

Warren - direct - Galeotti

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1 Q Who are the guys?

2 A I called Marlon. I'm not sure who he called.

3 This is when Chucky hit me on my arm and said, Yo,
4 we out of here.

5 So me Chucky and Travis walked up the hill. There
6 was kind of a hill of the parking lot -- parking -- yeah,
7 parking garage -- well, where we was at to go towards the
8 backyard and I entered my car.

9 While Chucky and Travis enter Travis car --

10 Q Can I pause you there for a second, sir?

11 A Yes, sir.

12 Q You just described a minute where you and Chucky had an
13 interaction at the party; is that right?

14 A Yes.

15 Q Prior to that, had you discussed the incident between
16 Tyshawn and Fresh with Chucky?

17 A Yes. Yes, sir.

18 Prior to that, we discussed it and let him know, we
19 discussed what happened with Tyshawn.

20 Q This is my fault. What incident with Tyshawn did you
21 discuss?

22 A The shooting, the shooting that happened on Pitkin, in
23 Pitkin projects.

24 Q Between who?

25 A Between Tyshawn and Fresh.

Warren - direct - Galeotti

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1 Q So Chucky was aware of it?

2 A Yes, he was.

3 Q Did you describe anything else prior to the party?

4 A I discussed that -- I discussed with him that I pushed a
5 button on Fresh, his attitude toward -- towards it was it is
6 what it is. Like, he wasn't mad; he wasn't happy. It is what
7 it is. He felt like he violated also.

8 Q Who violated?

9 A Chucky felt like Fresh violated also.

10 Q Violated who?

11 A Tyshawn Corbett, which is his cousin, and an E.A.M.
12 member. So he agreed after what happened that it was supposed
13 to be done.

14 Q What was supposed to be to be done?

15 A That a button was supposed to be pushed on Fresh.

16 So when --

17 Q Take us back now to the party.

18 A Yeah. So with the button being -- Fresh being punched in
19 jail and Fresh coming home is two days before this party, so
20 us -- so we know that is kind of shaky when it comes to Pitkin
21 projects and Fresh and us. So seeing Fresh and not able to
22 really have a conversation if it was dead between our side,
23 E.A.M. and Pitkin projects, we knew something was wrong. We
24 knew him being here with a hoodie on, summertime that it was a
25 problem.

Warren - direct - Galeotti

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1 Q Who had a hoodie on?

2 A Fresh had a hoodie on.

3 Q So what did you do?

4 A Like I explained, he tapped my arm and said, We outta
5 here.

6 Q Who tapped your arm?

7 A Chucky tapped my arm and we started to walk up the hill
8 to leave.

9 I got in my car, as Chucky and Travis got in their
10 car. The way I was parked I had to do a U-turn to get to
11 where Chucky's -- where Travis car where Chucky was in was
12 parked. As I'm getting to the corner where their car was
13 parked, I see Fresh by the car, by the car shooting at the
14 car. Fresh turned around towards me as if he was going to
15 shoot. I don't know if he knew it was me or not, but he
16 turned towards me. And that's when I just drove off, skrrrr,
17 trying to get out of there.

18 Q Let's break this down.

19 Did you observe Fresh firing the gun?

20 A Yes, I did.

21 Q The first shots that you saw, who were they directed at?

22 A It was directed at Chucky.

23 Q Did he continue firing a weapon from what you saw?

24 A Yes, he did.

25 Q Did you observe one way or the other where those

Warren - direct - Galeotti

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1 additional shots went?

2 A All of it was at Chucky, but after closer examination,
3 after we met up, after this -- well, after the shooting and I
4 got away, Chucky called me like, yo, bro, I could have died.
5 He really tried to kill me.

6 And if I am not mistaken, Chucky explained to me
7 that I think the gun jammed, like, I think the gun jammed.

8 And when we went to a party on Milford, that's when
9 we looked at the car and seen that there was only one shell,
10 one gun shell in the car, one hole in the back car.

11 Q Whose car was the hole in?

12 A This was Travis girlfriend car.

13 I remember this because Travis was saying my girl
14 going to be fucking mad, this car, so. So Travis was mad at
15 that. So I remember it was Travis girl car.

16 Q Who was traveling in Travis's car?

17 A Chucky was traveling in his car.

18 Q Were you in a separate car?

19 A Yes, I was in my car.

20 Q Did you meet up with Chucky, the defendant, later that
21 night?

22 A Yes.

23 Q Did you discuss what transpired at the party?

24 A Yes, I did. We stayed together that whole night.

25 I was very upset for many reasons: One, the reality

Warren - direct - Galeotti

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1 was that shooting wasn't for Chuck, because Chuck just got
2 there. They was aiming to kill me, one.

3 Q You knew that for a fact?

4 A Yes, sir. I know this for other reasons. If you want me
5 to explain now.

6 Q Proceed with the story and we can return.

7 A So, I was mad also that I am the one that invited Chucky
8 to this party and he almost died because of me, so I felt real
9 mad.

10 When we started talking about it I was mad, like,
11 yo, we to got to do something. Chucky laughed, and said Don't
12 worry about it, we chillin', we handle that, Imma handle that,
13 just know that, Imma handle that.

14 I'm like aight. And we partied for the rest of that
15 night.

16 Q When did you understand him to mean when he said I'm
17 going to handle that?

18 A That he is going to take it upon himself to make sure
19 that he get Fresh his self.

20 Q What do you mean "get"?

21 A "Get" means to retaliate. He tried to kill me; I'm going
22 to try to kill him or kill him.

23 Q Did Chucky express that he felt Fresh had tried to kill
24 him, "him" being Chucky?

25 A Yes. Definitely. He definitely, you know, said that.

Warren - direct - Galeotti

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1 You know, he was shot. He said, Bro, I thought I was dead,
2 bro, like, I seen him.

3 He told me he heard him say some words, but I don't
4 remember exactly what words he said before he started
5 shooting.

6 Q Fresh -- Chucky thought he heard Fresh -- sorry --

7 A Yes. Chucky -- Chucky told me -- like he explained to
8 me, like, yo, bro came up to the car and I looked at him, and
9 he said -- Fresh said some words.

10 But he told me what words he said that he heard
11 before he started shooting. I just don't remember the words
12 that he said.

13 Q Fresh was close enough -- well, based on your
14 observations, was Fresh close enough to say or yell something
15 to where Chucky was?

16 A Yes.

17 Q Did you continue to have conversations with Chucky about
18 Fresh?

19 A Yes, I did.

20 Q What happened in those conversations?

21 A In these conversations, Chucky was adamant about getting
22 Chucky, I mean, Chucky was adamant about getting Fresh.

23 Q What do you mean getting Fresh?

24 A Getting Fresh, as in catching him, as spoke before, make
25 sure I shoot him or kill him because he felt like he violated

Warren - direct - Galeotti

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1 him.

2 Q According to this plan, who was supposed to shoot Fresh?

3 A Chucky felt -- he wanted to shoot him himself.

4 Many people felt that Fresh violated and that he
5 needed to get dealt with what we just said.

6 Q Were other members of E.A.M. concerned by what happened?

7 A Yes, they was.

8 Q How do you know that?

9 A They called me. They text me. They checked on me. They
10 wanted to know what was going on, what were we doing.

11 Q Did they express their concern about the defendant
12 getting shot at?

13 A Definitely. They didn't like that. They was really
14 upset that Chucky got shot at.

15 Q Okay.

16 MR. GALEOTTI: If I could please show just to the
17 witness and counsel Government Exhibit 1019.

18 Q Mr. Warren, do you recognize what is depicted in
19 Government Exhibit 1019?

20 A Yes, I do.

21 Q What is it?

22 A This is a message between me and a friend of mines named
23 Bliz.

24 Q Is this a true and accurate conversation that you had
25 with Bliz?

Warren - direct - Galeotti

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1 A Yes, it is.

2 Q Where is it taken from?

3 A Say that again.

4 Q Meaning how did you receive this message?

5 A On my phone.

6 MR. GALEOTTI: Your Honor, the Government offers
7 Government Exhibit 1019.

8 MR. GUADAGNINO: No objection.

9 THE COURT: We receive Government Exhibit 1019.

10 (Government's Exhibit 1019 received in evidence.)

11 Q Now, Mr. Warren, focusing on the first message on July
12 22, 2018, time stamped 12:40:56, who sent that message?

13 A Bliz.

14 Q The top message?

15 A At what time?

16 Q The first message available that I am pointing --

17 A Okay. I see.

18 This was me sending to Bliz.

19 Q What did you say?

20 A We had some backyard party.

21 Q Which party were you referring to in that message?

22 A It was a different party from the first party we was at.
23 We went to two more parties after the shooting.

24 Q After you had gotten shot at, you went to two additional
25 parties?

Warren - direct - Galeotti

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1 A Yes, we did.

2 Q What did Bliz respond at timestamp 12:48:27?

3 A He responded laugh out loud, I see at night, don't stop,
4 but aight, be on point, though, bro.

5 Q What does it mean "to be on point"?

6 A To be on point means to be aware of your surroundings, to
7 stay focused about what's going on around you.

8 Q And what did you respond on July 22, 2019, 12:54:28?

9 A I said, Yeah, definitely we in the vill, it's lit and
10 that's going to be handled, that don't have to be tonight.

11 Q What does that mean?

12 A I was telling him that the party is cool, and that that
13 we are going to get Chuck -- I mean -- excuse me. We're going
14 to get Fresh and that don't have to be tonight, that could be
15 any time. But we definitely going to get Fresh.

16 Q Why did you say that?

17 A Because I know that -- or I felt that -- let me say I
18 felt that that was going to get handled because he was
19 violating. I felt personally that he violated.

20 Q Who violated?

21 A That Fresh violated. Like I said, I felt personally that
22 he tried to kill me and that he tried to kill my friend.

23 Q Who was your friend?

24 A Chucky.

25 MR. GALEOTTI: Can we please show just to the

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1 witness and counsel Government Exhibit 1020, please.

2 Q Mr. Warren do you recognize what is depicted in
3 Government Exhibit 1020?

4 A Yes, I do.

5 Q How do you recognize it?

6 A I see my number and a friend of mine's name, 40.

7 Q What is Government Exhibit 1020?

8 A This is a message from my phone.

9 MR. GALEOTTI: Your Honor, the Government offers
10 Government Exhibit 1020.

11 MR. GUADAGNINO: No objection.

12 THE COURT: We admit Government Exhibit 1020.

13 (Government's Exhibit 1020 received in evidence.)

14 Q Mr. Warren, who is listed in the participants' area of
15 Government Exhibit 1020?

16 A This is 40 and me.

17 Q Mr. Warren, is 40 the individual you previously
18 identified in Government Exhibit 8?

19 A Yes, sir.

20 Q Now, who -- so the first message, July 22, 2018,
21 12:47:57, who's that message from?

22 A This message from 40.

23 Q What does he say?

24 A In this shit in Mount Vernon is lit, y'all should pop
25 out, get away from the hood.

Warren - direct - Galeotti

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1 And then he said, right after that, Son, I'm going
2 to take care of him personally.

3 Q Okay. What does that mean?

4 A He stating his self that he is going to be the one to
5 handle or to kill Fresh.

6 Q Who did he send this message to?

7 A He sent this to me.

8 Q Who did you understand him to mean when he said "him"?

9 A He was talking about his self.

10 Oh, when he said "him," he was talking about Fresh.

11 Q Why did you understand -- withdrawn.

12 Why did you understand him to want to take care of
13 it personally?

14 A At this time, this is my man and I -- we was -- I talked
15 to him on the phone before this. So seeing this text, I know
16 that he was talking about Fresh.

17 Q Was 40 a member of E.A.M.?

18 A Yes, he was.

19 Q Okay.

20 A He was also M.A.P.

21 Q Mr. Warren, did you have a Facebook account?

22 A Yes, I did.

23 Q Did there come a time later in 2018 where you posted a
24 video from the night after you were shot at, you and the
25 defendant were shot at?

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1 A Not the night after. The night of that we got shot at
2 the backyard party. From the last message, I posted a video.

3 MR. GALEOTTI: If we can please show to just the
4 witness Government Exhibit 1023. I apologize. Let's please
5 show 613.

6 Q Do you recognize what is depicted in Government Exhibit
7 613, sir?

8 A Yes. This is from my Facebook, me saying happy birthday
9 to Chucky, two videos that I had of him and me together going
10 out.

11 Q Focusing in on the left, the video in Government Exhibit
12 613A, do you recognize a still of that video here?

13 A Yes, I do.

14 Q Did you post it yourself?

15 A Yes, I did.

16 Q Focusing on the right of Government Exhibit 613B, is that
17 a video file as well?

18 A Yes, it is.

19 Q Did you post it yourself?

20 A Yes, I did.

21 MR. GALEOTTI: Your Honor, the Government offers
22 Government Exhibits 613, 613A, and 613B.

23 MR. GUADAGNINO: No objection.

24 THE COURT: All right. We are admitting all of
25 those exhibits.

Warren - direct - Galeotti

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1 (Government's Exhibits 613, 613A, and 613B received
2 in evidence.)

3 Q Now, focusing up top for a moment, whose Facebook page is
4 this, sir, Government Exhibit 613?

5 A This is my Facebook.

6 Q What did you write?

7 A Happy birthday to my brother Chucky. I'm always his hype
8 man with the laughing emojis.

9 Q When did you post this?

10 A I posted this October 28, 2018.

11 Q When were the videos taken?

12 A One was the night of the -- Fresh shooting at Chucky and
13 another is 2018 New Year's.

14 Q So not October 28, 2018 when this was posted?

15 A No. I just posted these pictures -- these videos to
16 depict Chucky for the birthday.

17 Q Sir, now, looking at the screen, which video was taken on
18 the night Chucky was shot at by Fresh?

19 A The one on the left.

20 MR. GALEOTTI: Can we please show Government Exhibit
21 613A, please.

22 I'm sorry, 613B, please.

23 (Video playing.) (Video stopped.)

24 Q Who's depicted in that video?

25 A Chucky.

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1 Q Whose voice can be heard on that video?

2 A It could be mine. That is mine.

3 Q How long after Chucky was shot at was that video taken,
4 to the best of your recollection?

5 A Probably a few hours later.

6 MR. GALEOTTI: Could you please go back to the first
7 page, Government Exhibit 613.

8 Q Sir, what did you mean when you wrote I'm always his hype
9 man?

10 A Any time he's dancing. I'm always the one hyping him up
11 to dance.

12 Chucky is usually a mellow guy. He don't really
13 dance, but always hype him up to dance.

14 Q How close were you?

15 A Real close. Like I said, on this, he's like a brother to
16 me.

17 Q Why are you emotional right now?

18 A Because it hurt that -- hum, hum. It hurt that it came
19 to this, but, hum....

20 Q Were you with the defendant on New Year's 2018?

21 A Yes, I was.

22 Q Is the video on the right taken -- when was taken?

23 A This was taken New Year's of 2018.

24 MR. GALEOTTI: Can you please show what's in
25 evidence as Government Exhibit 613A.

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1 (Video playing.) (Video stopped.)

2 Q Sir, who is depicted in that video?

3 A That is Chucky.

4 Q Whose voice can be heard on the video?

5 A That is my voice.

6 Q Did you see whether the defendant was making any hand
7 motions in this video?

8 A Yes. In both videos he was throwing up Mazzi or Milla.

9 Q What does it mean to throw up Mazzi or Milla?

10 A When you throw up the -- hum, when you throw up your
11 pinkie and your pointer finger and throw it down to make the
12 M.

13 THE COURT: This is New Year's Eve 2017 or New
14 Year's Eve 2018?

15 THE WITNESS: This is bringing in '18.

16 THE COURT: 2017 into 2018.

17 THE WITNESS: Yes, ma'am.

18 Q Bringing you back to July 22, 2018, the night of the
19 party in Government Exhibit 613B -- well, initially, the
20 backyard party and then the dancing video in 613B, did you
21 continue after those events to discuss Fresh with the
22 defendant?

23 A Yes. Yes, we did.

24 Q What happened?

25 A He told me that -- he told me that he was on it, that

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1 he's been watching his page and stuff.

2 Q Who was watching whose page?

3 A Chucky was watching Fresh's page.

4 Q Did he tell you why?

5 A He was trying to figure out where he about at or where he
6 was going so he would catch up.

7 Q Did you agree with the defendant that one of you would
8 murder Fresh?

9 A Yes, sir.

10 Q Did there come a time when you shot Fresh?

11 A Yes, it is.

12 Q How did that come to be?

13 A One night, not too long after this party, after he shot
14 at us, 40, the person depicted, the first one on the left, on
15 the bottom, bottom left --

16 MR. GALEOTTI: Let the record reflect the witness is
17 indicating Government Exhibit 8.

18 A -- calls my phone and state to me that he just seen
19 Fresh by Pitken projects.

20 At this time 40 is living in Pitkin projects with a
21 girl that he's dealing with.

22 While he's leaving Pitkin projects, he sees Fresh
23 and calls my phone and say he sees Fresh and said that he was
24 lacking, that he wasn't on point at all.

25 Q What does that mean?

Warren - direct - Galeotti

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1 A That he was walking around like nothing had happened.
2 He's not paying attention to his surroundings. He doesn't
3 even realize that 40 actually seen him.

4 So he called me, told me, I'm like aight, bet.

5 I don't got no gun. Where do I get a gun?

6 He tells me that the gun that he usually have is on
7 my block.

8 He used to sell weed on my block on Elton. He tells
9 me that the gun is under my stairwell. Under my stairwell is
10 like a storage unit that people put things there. So --

11 Q Was it out in the open?

12 A It's outside, but it's not out in the open. Anybody can
13 get it, though, if they knew where to go.

14 Q And 40 directs you to where it was?

15 A Yes, sir.

16 So he told me where it was. I grabbed the gun. I
17 hops in my car. He asks -- I call him back. I ask him so
18 what now? Where he at? Is he still there?

19 He tells me to park on Van Siclen and Glenmore, that
20 he's sure that he's going to go that way.

21 At this time, 40 is on Miller, on Miller, on Miller
22 between Pitkin and Glenmore. He's sitting in the car waiting
23 for Fresh, but he still got his sights on Fresh.

24 I'm still talking to 40 while all of this is going
25 on.

Warren - direct - Galeotti

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1 He then tells me Fresh is finally walking my way,
2 and he have a white hoodie on.

3 When Fresh walks my way, I starts to shoot the gun
4 that I received from under my -- from under my stairs. I
5 start to shoot the gun at Fresh. He falls. He falls down.
6 That's when I knew that he was shot. I run back to my car to
7 get away.

8 Q Where did you go?

9 A I exposed [sic] of the gun. First, I exposed [sic] of
10 the gun in a sewer and then I drove downtown Brooklyn not
11 knowing really where I was going. I was just trying to get
12 away. This is when 40 called me back or I called 40. He said
13 that he would pick me up.

14 So 40 picked me with up with a friend of ours named
15 Bliz that we have talked about. Bliz is not nothing. He's
16 just a guy from the hood.

17 At this time I called Chuck and let him know that I
18 shot Fresh.

19 Q What did Chucky say?

20 A Chucky said to meet him at a restaurant that he was at at
21 this time in East New York.

22 Q Did you go there?

23 A Yes, I did.

24 Q What happened?

25 A I met Chucky at the restaurant. He was with some guys

Warren - direct - Galeotti

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1 and some girls. First I went inside, but then we left out.

2 When I left out the restaurant, I think we -- I don't know if
3 we was waiting for Tyshawn or not, but when I left out the
4 restaurant, 40 was there and Tyshawn was there.

5 Q Before you continue, why did you call the defendant?

6 A Because I know that he was adamant that he wanted Fresh
7 to be shot, and I wanted to prove -- I wanted to let him know
8 I did that for him.

9 Q So what happened at the restaurant?

10 A So at the restaurant, we walked outside and we talked
11 about what happened.

12 40 was excited. Tyshawn was excited.

13 Chucky, he's not the type to be excited. He's just
14 like, aight, that's what I'm talkin' about, yeah, you know.

15 Tyshawn is excited for his reasons. Tyshawn felt
16 that he was the only one in the hood putting in work. He was
17 the only shooting stuff, like, shooting people. So, he was
18 like, yeah, that's what I'm talkin' about. I'm not the only
19 one out here doing it, my boy Smilez.

20 And 40, he's just always hype, so he's, like, yeah,
21 he's explaining how he lined it up and made it happened.

22 I explained to them how it happened.

23 After this, we left. I got into Tyshawn car. I was
24 stressed out.

25 He was like don't worry about it. You going to be

Warren - direct - Galeotti

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1 aight, this had to happen, you going to be aight, and he
2 dropped me off to a girl house.

3 Q Did you discuss this with the defendant after the
4 restaurant?

5 A Yes.

6 Q What happened?

7 A After the restaurant, maybe a few days late -- not a few
8 days later. At the restaurant -- we did talk about that. I
9 told him I was nervous. I was nervous. I think he got -- I
10 think I'm on camera and stuff. He like you going to be all
11 right, don't worry about it.

12 A camera shot was tookeen [sic] of me. He showed me.
13 He was the one that showed me. It was from Twitter.

14 Q Let me pause you there.

15 Who showed you a photo?

16 A Okay. Chucky showed me a photo that was printed, that
17 was put on Twitter from the 75Th Precinct.

18 This is when I learned that precincts put up cases
19 that they didn't find out. So they put up a picture of me in
20 a hoodie. If you didn't know me, you wouldn't know it was me.
21 But me in a hoodie that night.

22 Q Did Chucky know it was you? Did the defendant know it
23 was you?

24 A Yes, he did.

25 He also -- he made a joke as, hum, we know it's you

Warren - direct - Galeotti

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1 because of your bowlegs, meaning anybody that know about your
2 bowlegs is going to know it's you, like that. He said, Next
3 time put your head down.

4 Q What happened after that?

5 A Time went on. We found out that Fresh -- Fresh is
6 paralyzed and Fresh -- he survived, he's all right.

7 Q Well, sir --

8 A Yes, sir.

9 Q -- how was he paralyzed?

10 A From me -- from me shooting him, hum, from me shooting
11 him. So I found out later on that I paralyzed him.

12 Q Do you have any mutual friends with Fresh?

13 A Yes, I do.

14 Q Do you have any mutual friends in common with Fresh?

15 A Yes, I do.

16 Q Who?

17 A Bliz, Snoop, Brab.

18 Q Any women?

19 A Yes. That's Snoop. That's Tryna.

20 Q Did you ever discuss what you had done with Snoop?

21 A Yes. So after the shooting, I was very nervous. I
22 realized what I did. I know what could happen if I get locked
23 up again, so I was very nervous.

24 I'm not sure who called my phone and said that --

25 like I said, that night, Bliz picked me up. He didn't know

Warren - direct - Galeotti

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1 why he was picking me up, but talking in the car he found out
2 what happened, you know. That is his friend.

3 And I found out that Tryna -- Tryna -- that he told
4 Tryna. I thought that he was going -- Tryna was going to
5 tell, hum --

6 Q Let me just focus you a little bit.

7 Did you have a discussion with Snoop about Fresh's
8 injuries?

9 A Yes.

10 Q What happened?

11 A So after I found out that Tryna knows, I calls her and
12 tell her I need to meet her. When I meet her, it's Snoop and
13 Tryna. I tell Tryna what happened. I explained why I did it,
14 you know, and I -- I explained why I did it, that I felt, you
15 know, he would come for me and I wasn't going to -- I'm not
16 losing my life. My kids need me.

17 She explained to me that she been at the hospital.
18 She -- she....

19 Q I'm sorry, sir. Okay, so did you learn from Tryna that
20 Fresh was paralyzed?

21 A No.

22 Q But did you learn it from someone?

23 A I learned -- yes, I learned it from someone. I'm not
24 sure who.

25 Q How did it make you feel?

Warren - direct - Galeotti

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1 A I was stressed. I was stressed, because, you know -- I
2 know we talked about it a lot, but at this time, like, all I'm
3 doing is -- suddenly here, like, like one foot in, one foot
4 out, so I was really stressed and mad at myself that I did
5 this.

6 Q Had you previously considered leaving the gang?

7 A Yes, I did. I have left once before.

8 Q Did you get a more standard employment? Withdrawn.

9 What other jobs, besides working for the gang, did
10 you have over time?

11 A I've worked -- I've been an electrician since 2014. I
12 learned that Upstate. I did construction. I was a laborer
13 for a year and some change.

14 After -- after I stopped doing laboring, I always
15 did electrician. I started my own business, Royal Essence
16 Hair Collection, or Royal Essence Bundles. I started selling
17 hair. And after that, I started party promoting.

18 Q Sir, did you ever talk with 40 about the night that you
19 shot Fresh?

20 A Yes, I did.

21 Q Did 40 tell you whether or not he tried to call anyone
22 else?

23 A Yes. He told me that he called Chucky first, but Chucky
24 didn't answer at first.

25 That's one thing that Chucky did say. That night

Warren - direct - Galeotti

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1 when we walked out the restaurant, he explained to me, he
2 called me first and I already was on him. I already knew that
3 he was in the studio, but I was busy. But he was like yo, you
4 got him -- like a joke, like, you got him first, I was on him,
5 though, I was on him.

6 Q What does it mean "to be on him"?

7 A That he already was planning on getting him. He was
8 already planning on shooting him. He already was doing his
9 studies on him before I was able to shoot him.

10 THE COURT: "Him" being?

11 THE WITNESS: Fresh.

12 Q Before Chucky was able to shoot Fresh?

13 A Yes.

14 Q After this incident, sir, did there come a time where you
15 were shot?

16 A Yes.

17 Q By who?

18 A A guy named Murk. His name not Murk. It's something
19 else.

20 A guy that I had the fight with in the Applebee's.

21 Q Were you hurt bad?

22 A Yes, I was. I was shot in my chest.

23 Q What happened?

24 A I had a 4th of July cookout.

25 Q What year?

Warren - direct - Galeotti

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1 A 2019, July 4th. I had a 4th of July cookout.

2 This is something that we started doing every year.
3 In this cookout, a guy called Handsome Boiler came to me and
4 explained to me, yo, Smilez, the guys that you had a fight
5 with in the Applebee's, they're here. I told him I didn't
6 really care because it was years before, I wasn't really
7 stressing it. I kind of told him it's nothing, but I wanted
8 to see how D felt because D is the one that got his eye socket
9 broken.

10 Q Who is D?

11 A D is the sixth man on the bottom right.

12 Q Of Government Exhibit 803, this board?

13 A Yes, sir. Yes, sir.

14 So I went to tell D what -- that they was there. He
15 asked where. When I turned around to point and show him where
16 they was, they wasn't there no more.

17 So me and D started going through the crowd because
18 it was a lot of people, to find where they went. And as I
19 popped my head out, he was popping his head out.

20 I asked him what's up? Do you remember me? He
21 stated that he didn't.

22 I asked him was he sure.

23 Once again he said, yeah, he sure.

24 I said, Aight, you have a good night. And as I'm
25 turning, he shoots me in my chest. I feels -- I feel the

Warren - direct - Galeotti

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1 piercing of the bullet and I starts to run down the block. I
2 collapse and woke up a day later in the hospital.

3 Q What were your injuries?

4 A I was shot in the chest. It pierced my lungs and came
5 out my side on my back.

6 Q Without telling us what was said, was there a time where
7 you were approached after you were shot, where you were
8 approached by law enforcement?

9 A Yes, sir.

10 Q And did they ask you whether or not you would provide
11 information about various incidents?

12 A No, they didn't.

13 Q What did they ask you?

14 A They asked me about the shooting with Fresh.

15 Q Did you speak to them at that time?

16 A No, I did not.

17 Q Did you tell the defendant that law enforcement had
18 visited you?

19 A Yes, I did.

20 Q What did he say?

21 A He explained that they was on us.

22 Q Who's they?

23 A They was the law enforcement and that he was ready for
24 trial -- he was ready -- he was going to get his lawyer ready
25 just in case they come.

Warren - direct - Galeotti

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1 Q Did there come a time where you decided to speak with law
2 enforcement?

3 A Yes, it did. Yes, it was.

4 Q When was that?

5 A This was the time I got locked up in October 2019.

6 Q What were you arrested for?

7 A I was locked up initially for a violation. After the
8 Feds came and seen me the first time, I stopped reporting to
9 parole, which issued me a warrant, and they came and locked me
10 up for that warrant.

11 Q Why did you agree to speak to law enforcement?

12 A I was tired. I was tired. I was tired of running, tired
13 of streets. I was just tired.

14 Every time I turn around, police is after me.

15 I felt like -- you know, just being shot. That
16 changed my life. That changed my mindset. So, I was tired.

17 Q Did you still want to be part of E.A.M. at the time?

18 A No, I didn't.

19 Q Let me direct your attention, please, to November of
20 2019.

21 Were you arrested that month by federal law
22 enforcement?

23 A Yes, I was.

24 Q Initially, what crimes were you charged with?

25 A I was charged with the shooting of Fresh.

Warren - direct - Galeotti

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1 Q After you were arrested, did you eventually agree to
2 cooperate with the Government?

3 A Yes, I did.

4 Q As part of that agreement, what's the primary thing that
5 you agreed to do?

6 A To tell the truth.

7 Q Are you testifying here today pursuant to that agreement?

8 A Yes, I am.

9 MR. GALEOTTI: I now show just to the witness what's
10 been marked as 3500-JW-19, and counsel as well and the Court,
11 of course.

12 If we can scroll through and stop at the last page,
13 please.

14 Q Mr. Warren, do you recognize was depicted in 3500-JW-19?

15 A Yes, I do.

16 Q What is it?

17 A This is the last page of my cooperation agreement.

18 Q Is that your signature?

19 A Yes, it is.

20 Q Is this the agreement pursuant to which you are
21 testifying today?

22 A Yes, sir.

23 MR. GALEOTTI: Your Honor, the Government offers
24 Government Exhibit 3500-JW-19 into evidence.

25 MR. GUADAGNINO: No objection.

Warren - direct - Galeotti

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1 THE COURT: 3500-JW-19 is admitted.

2 MR. GALEOTTI: If we can please go back to the first
3 page, please.

4 (Government's Exhibit 3500-JW-19 received in
5 evidence.)

6 Q Sir, when you agreed to cooperate, did you agree to plead
7 guilty to more charges than those then you had initially been
8 charged with?

9 A Yes, I did.

10 Q What were you initially charged with?

11 A I was charged with the shooting of Fresh.

12 Q And what ultimately -- how many counts did you ultimately
13 plead guilty to?

14 A I pled out to six counts.

15 Q Now, let me direct your attention to page one.

16 Did you plead guilty to racketeering conspiracy?

17 A Yes, I did.

18 Q What's the maximum term of imprisonment you can get?

19 A 20 years.

20 Q Go to page two, please. Did you plead guilty to
21 unlawfully possessing a firearm?

22 A Yes, I did.

23 Q What is the maximum term of imprisonment?

24 A Life.

25 Q Count Three?

Warren - direct - Galeotti

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1 MR. GALEOTTI: Count Three, please, and Four.

2 Q Mr. Warren, did you plead guilty to murder
3 in-aid-of-racketeering?

4 A Yes, I did.

5 Q Sorry. Conspiracy?

6 A Yes.

7 Q What's the maximum term of imprisonment for that?

8 A Ten years.

9 Q What did you do to make you guilty of that crime?

10 A I, with others, planned to kill someone, someone that was
11 opposition of us.

12 MR. GALEOTTI: Please continue the counts. Counts
13 Five and Six.

14 Q Did you plead guilty to assault in-aid-of-racketeering?

15 A Yes, I did.

16 Q And, finally, Count Six. Did you plead guilty to
17 unlawfully discharging a firearm?

18 A Yes, I did.

19 Q What's the maximum term of imprisonment for that?

20 A Life.

21 Q You used the word "conspiracy." Do you know what that
22 means?

23 A Kind of.

24 Q What does it mean as far as you understand it?

25 A Conspiracy is not the act of doing something, but it

Warren - direct - Galeotti

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1 could be that the possibility of doing something or planning
2 for something to happen.

3 MR. GALEOTTI: If you could go to page one, please.

4 Q Is one of the people that you agreed to -- who are the
5 people you agreed to commit crimes with, sir?

6 A Tyshawn, Marlo, D, 40, Chucky, Bowser, Buck.

7 Q Among others?

8 A Yes. Yes.

9 (Continued on next page.)

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Warren - direct - Galeotti

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1 BY MR. GALEOTTI: (Continuing)

2 Q Are you familiar with the term 5K or 5K letter?

3 A Yes, I am.

4 Q Do you have an understanding, if at all, about how a 5K
5 letter would affect your sentence?

6 A The only thing I understand that if I get a 5K letter,
7 that the judge is permitted, if she wants to, can go under my
8 mandatory minimum which is 15 years.

9 Q Who -- do you have a 5K letter right now?

10 A No, sir.

11 Q Who could issue a 5K letter?

12 A Only the government, only the prosecutor.

13 Q Who decides your sentence?

14 A The judge do.

15 Q Which judge?

16 A This judge right here.

17 Q Do you know whether a judge has to accept a 5K letter?

18 A They do not have to accept it. That's the first thing
19 was explained to me when I copped out, that no matter what's
20 being said now or signed, at the end, they do not have to
21 accept the 5K.

22 Q What was the primary thing you were asked do as part of
23 the agreement?

24 A To tell the truth.

25 Q Have you already pled guilty to your crimes?

1 A Yes, I did.

2 Q What, if anything, happens if you don't tell the truth?

3 A I would not get a 5K letter and I would be facing
4 15 years to life and anything in between.

5 Q What would happen to your cooperation agreement?

6 A It would be null and void. It means I did not do as I
7 said I would.

8 Q Could you take your plea back if your agreement is null
9 and void?

10 A No, I cannot.

11 Q Can you get sentenced to 20 years?

12 A Yes, I can.

13 Q To 30?

14 A Yes, I can.

15 Q To life?

16 A Yes, I can.

17 Q Has anyone promised you a lower sentence?

18 A No, they did not.

19 Q Do you know what your sentence will be?

20 A No, I do not.

21 Q Do you have a sentencing date?

22 A No, I do not.

23 Q Do you believe you'll get a 5K if you lied at any piece
24 of your testimony?

25 A No, I do not.

1 Q Does the outcome of this case matter as to whether you'll
2 get a 5K letter?

3 A No, it do not.

4 Q If the defendant is acquitted, can you still get a 5K
5 letter?

6 A Yes, I can.

7 Q If the defendant is convicted, might you still not get a
8 5K letter?

9 A Yes, I can.

10 Q Meaning it's not promised?

11 A Yes, there's nothing promised.

12 Q Sir, what are you hoping will happen if you told the
13 truth through all of your testimony?

14 A I'm hoping if I tell the truth, I have agreed to my plea
15 agreement and I get a 5K letter and the judge will be lenient
16 on my sentencing.

17 Q Do you regret any of the crimes you committed as part of
18 E.A.M.?

19 A Yes, I do.

20 Q Do you want to testify here in court?

21 A I did not but I know I had to tell the truth to get what
22 I want.

23 Q And what is it that you want?

24 A Some leniency for the crime that I did commit.

25 Q Was it easy to cooperate in this case?

1 A No not at all. Not at all. It's been the worst
2 experience of my life. I've been ridiculed. I've been
3 violated in every way. I have lost so much. I've lost my
4 brother. People are talking about me. I'm lonely. Stressed.
5 I've been through a lot for these reason.

6 Q Do you want to move on from E.A.M., sir?

7 A Yes, I do.

8 Q You said you're from East New York, is that right?

9 A Yes, sir.

10 Q Do you think you can never go home to East New York after
11 this?

12 A No, I cannot.

13 Q Why not?

14 A My safety, my safety and my family's safety. I don't
15 want anything to happen.

16 MR. GALEOTTI: One moment, Your Honor, if I may.

17 (Pause.)

18 MR. GALEOTTI: No further questions at this time.

19 Thank you, Your Honor.

20 THE COURT: All right. Thank you.

21 Are the jurors ready for a mid-afternoon break or
22 would you like to keep going?

23 THE JUROR: Break, please.

24 THE COURT: Break? All right. Please don't talk
25 about the case. Let's take about ten minutes and we'll come

1 retrieve you when we're ready. Thank you.

2 (Jury exits.)

3 THE COURT: All right. Ten minutes.

4 Is there anything I need to address before we break?

5 MR. GALEOTTI: Not for the government, Your Honor.

6 MR. GUADAGNINO: Not for the defense. Thank you,
7 Your Honor.

8 THE COURT: Thank you.

9 (Recess taken.)

10 (In open court; outside the presence of the jury.)

11 THE COURT: All right. I want to advise the parties
12 Mr. Smothers is back in the courtroom. I issued an order.
13 It's a sealed order meaning it's for attorneys' eyes only.
14 It's regarding the food issue. It cannot be shared with
15 anybody. It's only for the attorneys. All right?

16 MR. GUADAGNINO: Thank you.

17 THE COURT: Yes. No copies should be made. Thank
18 you.

19 MR. GALEOTTI: Thank you.

20 MR. SIEGEL: Your Honor, does that mean it will be
21 e-mailed --

22 THE COURT: I'm not e-mailing it. It's not on the
23 docket. Do you want us to e-mail it to you? I just don't
24 want it disseminated.

25 MR. SIEGEL: I don't think -- if it's a sealed

1 order, I don't think we can access it on ECF.

2 THE COURT: Well, I made it for attorneys' eyes
3 only.

4 MR. SIEGEL: We'll check it on ECF.

5 THE COURT: Ms. Jackson can give you a copy perhaps.
6 I just don't want it beyond.

7 MR. GALEOTTI: Yes, Your Honor.

8 MR. GUADAGNINO: The defense -- thank you, but the
9 defense, as long as the order is there, that's fine with us.
10 We don't need to see it.

11 THE COURT: Right. Well, you may see it but nobody
12 else, Mr. Guadagnino, just to be crystal clear.

13 MR. GUADAGNINO: Absolutely.

14 THE COURT: Thank you.

15 MR. GUADAGNINO: Thank you, Your Honor.

16 (Jury enters.)

17 THE COURT: All jurors are present. Please have a
18 seat.

19 Mr. Guadagnino, would you like to cross-examine this
20 witness?

21 MR. GUADAGNINO: If it pleases the Court, thank you,
22 Your Honor.

23 THE COURT: All right.

24 MR. GUADAGNINO: Your Honor, may I remove my mask?

25 THE COURT: Yes.

Warren - cross - Guadagnino

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1 MR. GUADAGNINO: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. GUADAGNINO:

4 Q Mr. Warren.

5 A Yes, sir.

6 Q You met Quandel at I.S. 302.

7 A I did not go to I.S. 302. I met him in the neighborhood.

8 Q In East New York?

9 A Yes, sir.

10 Q He's younger than you.

11 A Yes, sir.

12 Q By how much?

13 A I think two years, three years, the most.

14 Q You used to play tag together.

15 A Yes, sir.

16 Q You used to play around the block.

17 A Yes, sir.

18 Q You grew up together as children.

19 A Yes, sir.

20 Q Now, I want to ask you questions about your background.

21 Do you understand?

22 A Yes, sir.

23 Q You grew up on Elm Street in Brooklyn.

24 A Yes, sir.

25 Q In East New York.

Warren - cross - Guadagnino

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1 A Yes.

2 Q You have four children.

3 A Yes, I do.

4 Q How old?

5 A I have two 14 year olds, one 8 year old and one that's
6 going to be 4 tomorrow.

7 Q And you're in touch with them, right?

8 A Yes, I am.

9 Q And it hurts to be incarcerated.

10 A Yes, it do.

11 Q You can't hug them.

12 A No.

13 Q You can't see them when you want.

14 A No, I cannot.

15 Q You put yourself in this position.

16 A Yes.

17 Q It's painful, right?

18 A Yes, sir.

19 Q It hurts you.

20 A Yes, it do.

21 Q You're suffering.

22 A Yes, I am.

23 Q You don't see your family.

24 A No, I do not.

25 Q You don't see your friends.

Warren - cross - Guadagnino

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1 A I don't have any friends.

2 Q You have four corners in a cell.

3 A I'm in a dorm, I'm in a dorm area right now, but I
4 understand where you coming from.

5 Q You're locked up.

6 A Yes, sir.

7 Q They tell you when to eat.

8 A Yes, sir.

9 Q They tell you when to sleep.

10 A Yes, sir.

11 Q They tell you what to do.

12 A Yes, they do.

13 Q You have very few choices in life.

14 A Right now, yes, I do.

15 Q You're suffering.

16 A Yes.

17 Q Do you want to see your children?

18 A Yes, I do.

19 Q You want to be with them?

20 A Yes, I do.

21 Q You have other family?

22 A Yes, I do.

23 Q You have who?

24 A I have my moms and my brothers and sisters.

25 Q You want to see your mom?

CMH

OCR

RDR

FCRR

Warren - cross - Guadagnino

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1 A Yes, I do.

2 Q You want to see your brother?

3 A Yes, I do.

4 Q And your sister?

5 A Yes.

6 Q You don't want them to visit you in prison.

7 A No, I do not.

8 Q For the rest of your life.

9 A No, I do not.

10 Q Because it's hurtful.

11 A Yes.

12 Q Not only are you suffering, they're suffering.

13 A Yes, this is true.

14 Q You can't have that.

15 A No, I cannot.

16 Q You got arrested when you were 12 years old the first
17 time, correct?

18 A About, yes.

19 Q For a gun?

20 A Yes, a gun that someone else had. I didn't have
21 possession of it.

22 Q But for a gun.

23 A Yes.

24 Q In East New York.

25 A Yes, sir.

Warren - cross - Guadagnino

675

1 Q 12 years old.

2 A Yes, sir.

3 Q You said Dooley brought the gun.

4 A Yes, he did. No, Dooley had the gun, possession.

5 Another guy brought a gun that we know.

6 Q But you got arrested for it.

7 A Yes, all three of us.

8 Q And you went to court.

9 A No, I did not. I was released from the precinct.

10 Q But you were put in handcuffs.

11 A Yes, sir.

12 Q And at that point, you went and you saw the police.

13 A Yes, sir.

14 Q And then you were released.

15 A Yes, sir.

16 Q And then at 16, you were arrested for selling drugs.

17 A Yes, I was arrested for selling drugs, but I didn't sell
18 those drugs.

19 Q Well, you were arrested for selling drugs, right, for a
20 drug sale?

21 A Yes, sir.

22 Q There was another time when you scammed credit cards.

23 A Yes, sir.

24 Q You stole people's credit cards, right?

25 A Yes, sir.

Warren - cross - Guadagnino

676

1 Q You and Marlon?

2 A Yes, sir.

3 Q And the reason you did it was to book hotel rooms.

4 A No, that's not the reason but we did book hotel rooms.

5 Q Right. So one of the reasons was to book hotel rooms.

6 A Yes, sir.

7 Q Right?

8 A Yes.

9 Q And going back to what you testified earlier, you had
10 Kayne Harris, Fresh, beat up in jail?

11 A Yes, sir.

12 Q At 19, you were arrested for shooting somebody in the
13 leg.

14 A Yes, sir.

15 Q And you pled guilty to shooting somebody in the leg
16 before Judge Foley?

17 A Yes, sir.

18 Q Do you remember Judge Foley in Brooklyn Supreme Court?

19 A Yes, I do.

20 Q Right?

21 A Yes.

22 Q You pled guilty to shooting somebody in the leg.

23 A Yes.

24 Q Quandel wasn't with you.

25 A No, he was not.

Warren - cross - Guadagnino

677

1 Q But you pled guilty to shooting somebody in the leg.

2 A Yes, sir.

3 Q In front of Judge Foley.

4 A Yes.

5 Q You did a year in jail.

6 A A little bit more than a year because I had the drug,
7 drug charge also.

8 Q Because of the drug charge, and you pled guilty to the
9 drug charge too.

10 A Yes, sir.

11 Q You pled guilty in front of Judge Ferdinand. Remember
12 Judge Ferdinand?

13 A I don't remember but I know I pled guilty.

14 Q Right. And you were supposed to do a drug treatment
15 program.

16 A Yes.

17 Q You were supposed to do it to help yourself.

18 A Yes, sir.

19 Q To help your addiction.

20 A Yes, sir.

21 Q But you didn't complete it.

22 A No, I did not.

23 Q You remained addicted.

24 A Yes.

25 Q You have a drug problem.

Warren - cross - Guadagnino

678

1 A Yes, I did.

2 Q Yes, but you didn't want to get help.

3 A You can say that.

4 Q And then you went to jail for that as well.

5 A Yes, sir.

6 Q And then when you got out of jail, you started selling
7 crack cocaine.

8 A Yes, sir.

9 Q You started selling crack cocaine on Glenmore.

10 A Yes, sir, and Essex.

11 Q And Essex. And there was a time when you shot a gun
12 towards the crack spot.

13 A Yes, sir.

14 Q Quandel wasn't with you.

15 A This was before I did that, those years.

16 Q You did it on your own.

17 A Yes, I did.

18 Q Quandel wasn't with you.

19 A You're absolutely right, sir.

20 Q There was a time out of the many times you were in jail,
21 one time you broke a glass cup to cut another inmate at Rikers
22 Island.

23 A No, sir.

24 Q You broke a cup to cut an inmate.

25 A No, sir. The two times that I did cut someone, I had a

Warren - cross - Guadagnino

679

1 blade or a scalpel. I never broke a cup to cut an inmate.

2 Q You don't remember that you said that you broke a cup?

3 MR. GALEOTTI: Objection.

4 THE COURT: Asked and answered.

5 Q You met with the FBI and the U.S. Attorney many times in
6 this case, correct?

7 A Yes, I did.

8 Q You gave information, correct?

9 A Yes, I did.

10 Q You did have fights at Rikers Island and in upstate
11 New York prisons.

12 A I had one fight upstate.

13 Q And then you started selling marijuana at the page of 15.

14 A Yes, I did.

15 Q You later sold marijuana, one-fourth pound to one pound
16 in increments, correct?

17 A I'm confused about the poundage.

18 Q Well, you sold marijuana.

19 A Yes, I did.

20 Q And you sold that on your own.

21 A Yes, I did.

22 Q Quandel wasn't with you.

23 A Not all the time.

24 Q You participated in a tax return scam.

25 A Yes, I did.

Warren - cross - Guadagnino

680

1 Q You got an illegal amount of money from the IRS.

2 A Yes, I did.

3 Q Quandel wasn't with you for that.

4 A No, he was not.

5 Q You lied to the police once about how your neck got cut.

6 A Yes, I did.

7 Q You had a fight with your girlfriend and she cut your
8 neck.

9 A Yes, she did.

10 Q When the police came, you lied to them and told them you
11 were somebody else other than John Warren.

12 A Yes, I did.

13 Q You told them that you were your brother Rodrick
14 Phillips.

15 A Yes, I did.

16 Q You told them that you cut yourself.

17 A No, I did not.

18 Q You don't remember telling them that you cut yourself?

19 A No, I actually told them that someone else cut me and I
20 didn't see they face and they ran off on Randolph before I
21 could identify them.

22 Q And that was a lie.

23 A Yes, it was.

24 Q The police came back and they asked you what happened and
25 you said an unknown male cut you but that was a lie.

Warren - cross - Guadagnino

681

1 A Yes, it was.

2 Q So you lied to the police twice.

3 A Yes, I did.

4 Q Once about who cut you.

5 A Yes.

6 Q And once about your identity.

7 A Yes, sir.

8 Q When you were ten, you had mental health problems.

9 A Yes, I did.

10 Q You had to take medicine for mental problems.

11 A Yes, I did.

12 Q Do you remember the kind of medicine you used to take?

13 A No, I do not.

14 Q You never corrected that, did you?

15 A I didn't have -- I felt I didn't have to take it.

16 Q You told the teacher that you were going to jump out of a
17 window.

18 A Yes, I did.

19 Q Did you jump out of the window?

20 A No. With that situation, I remember very vividly I
21 wanted to leave the class so she blocked the class and said
22 that I can't leave the class so I said I'm going to jump out
23 the window to leave the class, not necessarily to kill myself.

24 Q Then you went to a psychiatrist to get help.

25 A Yes, John Taylor.

Warren - cross - Guadagnino

682

1 Q And then they prescribed medication for you.

2 A Yes, sir.

3 Q And were you taking that medication.

4 A Yes, I was.

5 Q But you never followed up on it.

6 A No. As I got older, I started taking the pills.

7 Q And you don't take any pills now.

8 A No, I do not.

9 Q Now, I'm going to ask you questions about July 28, 2018,
10 at around 4 o'clock in the morning.

11 A July 28th.

12 Q July 28, 2018.

13 A Yes, sir.

14 Q Okay? 4 o'clock in the morning.

15 A Yes, sir.

16 Q You were in Brooklyn.

17 A I'm not sure about that exact day.

18 Q You were looking for Kayne Harris.

19 A Okay.

20 Q You know him as Fresh.

21 A Okay.

22 Q You wanted to shoot him.

23 A Like I said, I don't know about that exact date. If you
24 could explain what date that is, then I can answer you better.

25 Q You testified that you shot Fresh.

Warren - cross - Guadagnino

683

1 A Was this on July 28th?

2 Q 2018.

3 A Okay. Now I know. Yes, sir.

4 Q Do you remember?

5 A Yes, I remember now.

6 Q Okay? You wanted to shoot Fresh.

7 A Yes, I did.

8 Q You wanted to kill him.

9 A Yes, I did.

10 Q Quandel wasn't with you.

11 A He wasn't there.

12 Q 40 called you on Facetime.

13 A I don't know how he called me. He definitely called me
14 though.

15 Q 40 told you he saw Fresh.

16 A Yes, sir.

17 Q 40 told you about a gun.

18 A Yes, sir.

19 Q Quandel didn't tell you anything about a gun.

20 A No, he did not.

21 Q A gun on Elton Street.

22 A Yes, sir.

23 Q The gun was in a shed.

24 A Yes, sir.

25 Q The shed was underneath some stairs.

Warren - cross - Guadagnino

684

1 A Yes, sir.

2 Q The stairs were part of your house.

3 A Yes, sir.

4 Q The house that you grew up in.

5 A Yes, sir.

6 Q Quandel had nothing do with that.

7 A He did not know about that gun being there.

8 Q You went to the shed.

9 A Yes, sir.

10 Q You opened the shed door.

11 A No, it's not a shed door. It's just gates that is
12 locked. All you got to do is put your arm in and grab
13 whatever you want to that's big enough to go through the
14 gates.

15 Q And you did that.

16 A Yes, sir.

17 Q All by yourself.

18 A Yes, sir.

19 Q Quandel wasn't with you.

20 A He was not.

21 Q You got a .38 caliber silver revolver.

22 A Yes, sir.

23 Q 40 was telling you where Fresh was.

24 A Yes, sir.

25 Q So you could kill him.

Warren - cross - Guadagnino

685

1 A Yes.

2 Q You wanted to kill him.

3 A Yes, I did.

4 Q You wanted to kill him for a shooting.

5 A Yes.

6 Q You thought he wanted to kill you.

7 A I know he wanted to kill me.

8 Q You knew he wanted to kill you.

9 A Yes.

10 Q Not Quandel.

11 A I knew that he wanted to kill me or anyone that was
12 involved with us. Quandel got caught up on him trying to kill
13 me.

14 Q You thought he wanted to kill you.

15 A Yes.

16 Q And you were told where to find Fresh to kill him.

17 A Yes, sir.

18 Q You were told Fresh's direction of travel.

19 A Yes, sir.

20 Q You were told what Fresh was wearing.

21 A Yes, sir.

22 Q Quandel didn't tell you any of that.

23 A No, he did not.

24 Q Quandel didn't even participate in that.

25 A He didn't participate in that night.

Warren - cross - Guadagnino

686

1 Q No. A man named Etho gave you information about Fresh.

2 A I don't remember Etho giving me any information.

3 Q You don't remember Etho giving you any information?

4 A No, sir.

5 Q You had people watching Fresh for you.

6 A No, sir.

7 Q People were watching Fresh and telling you where he was.

8 A 40 told me that night where he was. He wasn't actually
9 watching Fresh for me. Everybody knew what was going on and
10 he knew what happened so he called me when he seen Fresh.

11 Q And you said that 40 was talking to you on FaceTime.

12 A I did not explain how he was talking to me. I'm not sure
13 how we was talking. I just know that me and him was talking
14 that night through the whole thing.

15 Q You remember speaking to the FBI on February 9, 2019.

16 A February 9th? I don't remember that specific date but,
17 yes, around those times, I was meeting for proffer.

18 Q You spoke to the FBI about 14 times.

19 A Yes, give or take.

20 Q You spoke to the FBI on December 9, 2019.

21 A I don't remember that date specifically but that is in
22 the town line I was speaking to the FBI.

23 Q You spoke a Detective Vito Nicoletta.

24 A Yes, I did.

25 Q You spoke to an Assistant United States Attorney Maggie

Warren - cross - Guadagnino

687

1 Gandy.

2 A Yes, I did.

3 Q Your two defense attorneys were present.

4 A My two defense attorneys? I have one and I think he have
5 a partner that I met one time but I don't think I ever seen
6 them together.

7 Q You told them about the night you shot Fresh.

8 MR. GALEOTTI: Objection.

9 THE COURT: Clarify your question, please.

10 Q I asked you whether you were speaking to 40 on FaceTime.

11 A Yes. I told you I spoke to 40 that whole time while I
12 was shooting, before the shooting and after the shooting. I
13 did not hang up the phone. I don't know exactly how we spoke
14 through FaceTime over the phone but I was on the phone with
15 40.

16 Q That interview on December 9, 2019, do you remember
17 telling the FBI that 40 called you on FaceTime?

18 A No, I do not remember that.

19 Q Would anything refresh your memory?

20 A No, I do not remember having that. I remember saying
21 things that around this time, we felt that the FBI or police
22 couldn't track our phone calls through not the FaceTime but
23 FaceTime call, so that's something I could have said.

24 Q Right. And the reason you used FaceTime was because you
25 didn't want to be detected.

Warren - cross - Guadagnino

688

1 A Yes, sir.

2 Q You didn't want anybody to find out what you were doing.

3 A Yes.

4 Q You wanted to be sneaky.

5 A Yes, sir.

6 Q You wanted to do something illegal, right?

7 A Yes, sir.

8 Q You wanted to shoot another human being and kill them.

9 A Yes, sir.

10 Q But you didn't want to get caught.

11 A No one wants to get caught, sir.

12 Q And you intended that night to kill Fresh.

13 A Yes, I did.

14 Q Do you remember that now he's paralyzed from the neck
15 down?

16 A Yes, I do.

17 Q And your intent was to kill him.

18 A Yes, it was.

19 Q Not just paralyze him.

20 A No, sir.

21 Q And you drove your car to Glenmore and Van Siclen.

22 A No, sir.

23 Q You drove your car to where Fresh was --

24 A Are you talking about before or after?

25 Q Before you shot Fresh.

Warren - cross - Guadagnino

689

1 A Yes, sir.

2 Q You drove your car to Glenmore and Van Siclen.

3 A Yes, sir.

4 Q You were driving a gray 2017 Nissan sedan.

5 A Yes, sir.

6 Q You testified on direct examination that you pushed a
7 button for Fresh.

8 A Yes, I did.

9 Q Pushing a button means you made the call to hurt Fresh.

10 A Yes, I did.

11 Q You did that.

12 A Yes, I did, sir.

13 Q Quandel didn't do that.

14 A No, the call wasn't to Quandel. It was to me, yes, sir.

15 Q He's the godfather, according to you.

16 A Yes, sir. But Quandel be locked up a lot and Quandel is
17 not easy to reach so I'm easy to reach so everybody call me.

18 Q Quandel wasn't arrested. He wasn't in jail that time.

19 A Like I said, Quandel was hard to reach and I've been --
20 he's been in and out of jail so most people got my number
21 instead of Quandel's.

22 Q You pushed the button yourself, not Quandel.

23 A Yes, I did.

24 Q You decided to make a move to kill Fresh, not Quandel.

25 A Absolutely true.

Warren - cross - Guadagnino

690

1 Q You did that.

2 A Yes, sir.

3 Q That night before you shot Fresh, you parked the Nissan
4 on Glenmore and Van Siclen.

5 A The night before I shot Fresh?

6 Q No. Before you -- that night.

7 A Okay.

8 Q Before you shot Fresh.

9 A Yes, sir.

10 Q Before you shot him --

11 A Yes, sir.

12 Q -- you parked your Nissan on Glenmore and Van Siclen.

13 A Yes, I did.

14 Q Right? You were wearing a hoodie.

15 A Yes, I was.

16 Q You were wearing a hoodie to cover your head.

17 A Yes, I was.

18 Q You didn't want to get caught.

19 A No, sir.

20 Q You wanted to make sure you got away with it.

21 A Yes, sir.

22 Q You didn't want anybody recording it.

23 A No, sir.

24 Q You wanted to hide your face.

25 A Yes, sir.

Warren - cross - Guadagnino

691

1 Q Because you knew you were going to kill someone.

2 A Yes, sir.

3 Q So you covered your head.

4 A Yes.

5 Q You put the hoodie over your head.

6 A Yes.

7 Q And then you saw Kayne, Fresh.

8 A Yes, sir.

9 Q You found him.

10 A Yes, I did.

11 Q And you did not want him to see you coming.

12 A No, I did not.

13 Q You snuck up on him.

14 A Yes, sir.

15 Q You had that .38 caliber revolver in your hand.

16 A Yes, sir.

17 Q The silver 38 you got from your house.

18 A Not from my house. From a shed that's open to anybody in
19 my neighborhood including 40 who used to sell weed in front of
20 my house. His baby moms lived across the street but her shed
21 do have a door and this is why it was under mines.

22 Q You went to the shed and you got the gun yourself.

23 A Yes, I did.

24 Q Nobody gave it to you.

25 A No one gave it to me.

Warren - cross - Guadagnino

692

1 Q You say 40 told you where to go.

2 A 40 told me where the gun was.

3 Q You went there by yourself.

4 A Yes, I did.

5 Q And you yourself got it.

6 A Yes, I did.

7 Q And that's the house where you grew up in.

8 A Yes, it is.

9 Q The house where you were born.

10 A No, it's not.

11 Q The house where you were raised.

12 A You can say that, yes.

13 Q Well, it was the house where you were raised.

14 A Well, I been in a lot of houses. For the first 12 years
15 of my life, I lived in Flatbush.

16 Q Well, you were raised partially in that house.

17 A Yes, sir.

18 Q So you were very familiar with it.

19 A Yes, sir.

20 Q You knew how to get there.

21 A Yes, sir.

22 Q And you knew how to get that gun that night.

23 A Yes. After he told me how to get it, yes, I did.

24 Q He told you how to get it and you went and got it.

25 A Yes, I did.

Warren - cross - Guadagnino

693

1 Q Then as you approached Fresh, he did not see you coming.

2 A No, he did not.

3 Q You snuck up on him from behind.

4 A No, I did not.

5 Q How did you sneak up on him?

6 A He was walking my way and I started shooting while he was
7 on his phone. He was looking down at his phone and when he
8 started -- I don't know if I shot him before. He turned
9 around but when he realized that I was shooting at him, this
10 is when he turned around, it fell.

11 Q He began to run away.

12 A Yes, sir.

13 Q Because he saw you coming.

14 A I don't know if he seen me coming. I feel like it was
15 more of the shots than seeing me coming.

16 Q Well, you began shooting him.

17 A Yes, sir.

18 Q And he started to run away from you.

19 A Yes, sir.

20 Q So that he can survive.

21 A Yes, sir.

22 Q You ran him down.

23 A You can say that.

24 Q Yes. You ran him down as he was running away from you.

25 A Yes, sir.

Warren - cross - Guadagnino

694

1 Q You ran right up to him.

2 A Yes, sir.

3 Q And you just kept shooting him.

4 A It's only six, six shots in a revolver. What I do
5 remember is me getting there and there was no more shots in.

6 Q You emptied the gun into his body.

7 A Yes, I did. I don't know how many shots, how many times
8 I shot him, sir.

9 Q You shot him in the face.

10 A I don't know if I shot him in the face.

11 Q You shot him in the neck.

12 A I know that I shot him in the neck.

13 Q You severed his spine.

14 A And I know I did that, sir.

15 Q He can't walk for the rest of his life.

16 A Yes, that's what I was told.

17 Q He can't move anything from the neck down.

18 A That's what I was told.

19 Q You only had six shots in that gun.

20 A Yes, sir.

21 Q You wish you had more?

22 A No, sir.

23 Q Six was enough?

24 A Six was enough.

25 Q One would probably be enough, right?

Warren - cross - Guadagnino

695

1 A I guess so. I wasn't thinking about that that night.

2 Q You weren't thinking about it that night?

3 A No, I didn't check the chamber to see if bullets was in
4 there. I asked where the gun was. He told me where the gun
5 was and I know my mission of what I wanted to do was to get
6 Fresh.

7 Q Well, there were bullets in the gun.

8 A Yes.

9 Q And they were live bullets.

10 A Yes, sir.

11 Q And you did shoot at him.

12 A Yes, I did.

13 Q Again, you shot all the bullets out of the gun to him.

14 A Yes, I did.

15 Q You testified on direct that you only carried guns when
16 you were with Chucky.

17 A Yes, sir.

18 Q Chucky wasn't with you that night.

19 A Yes, that is true.

20 Q You were alone.

21 A The question was when do I carry guns. Even that night
22 or before that night, I have explained this many times, I have
23 not touched a gun since I been home in 2014 until that night I
24 shot Fresh. After that night, any time I had a gun or was in
25 possession of a gun, it was with Chucky.

Warren - cross - Guadagnino

696

1 Q Yes, but that night you weren't with Chucky.

2 A No, I was not, sir.

3 Q You were alone.

4 A Yes, I was.

5 Q He was nowhere near there.

6 A No, he was not.

7 Q You were the one that pushed that button.

8 A Yes, I did.

9 Q You're the one that got that gun.

10 A Yes, I did.

11 Q And he had nothing to do with that.

12 A In ways, you can say that. In ways, you're wrong. So...

13 Q Well, you emptied your gun on Fresh.

14 A Yes, sir.

15 Q Paralyzed him for life.

16 MR. GALEOTTI: Objection.

17 THE COURT: Asked and answered. You've gone over
18 this at least twice before.

19 Q You ran back to your car.

20 A Yes, sir.

21 Q It was a 2017 Nissan sedan.

22 MR. GALEOTTI: Objection.

23 THE COURT: This has been asked and answered, sir.

24 MR. GUADAGNINO: He ran back to the 2017 Nissan?

25 THE COURT: Yes, you talked about this.

Warren - cross - Guadagnino

697

1 Q After the shooting.

2 A Yes, sir.

3 Q Right? And you got into the car to get away.

4 A Yes, sir.

5 Q Right? And you drove that car, the getaway, to

6 Van Siclen and Jamaica Avenue.

7 A Van Siclen, not Jamaica, the block before that. I don't

8 know if it's Arlington or Ridgewood. This is where I seen a

9 sewer, a sewer, and that's where I threw the gun at.

10 Q You wanted to get rid of the gun.

11 A Yes, sir.

12 Q You wanted to throw it away.

13 A Yes, sir.

14 Q And you threw it towards the sewer.

15 A Yes, sir.

16 Q And then you drove to Bed-Stuy.

17 A Yes, sir.

18 Q I'm going to ask you some questions about August 3, 2018,

19 six days after you shot or you attempted to kill Fresh.

20 A Yes, sir.

21 Q Okay? Again, August 3, 2018, you were still driving that

22 2017 Nissan.

23 A Yes, I was.

24 Q The Nissan was registered to you.

25 A Yes, sir.

Warren - cross - Guadagnino

698

1 Q You were pulled over by the NYPD.

2 A Yes, sir.

3 Q The police officer asked you for your driver's license.

4 A Yes, sir.

5 Q You gave the officer a license that wasn't yours.

6 A Yes, sir.

7 Q You gave him your brother Rodrick Phillips' license.

8 A Yes, I did.

9 Q Because you wanted to not get arrested.

10 A No, not actually get arrested. I wanted to -- my license
11 was suspended so I was using my brother ID. It wasn't about
12 being arrested.

13 Q You weren't supposed to be driving.

14 A Yes, sir.

15 Q Because you could have gotten arrested for driving with a
16 suspended license.

17 A Yes, sir.

18 Q You wanted to get away with that.

19 A Yes, sir.

20 Q You wanted to keep driving.

21 A Yes, sir.

22 Q So you employed a lie using your brother's license to get
23 away with that.

24 A Yes, sir.

25 Q And you showed that license to a police officer.

Warren - cross - Guadagnino

699

1 A Yes, sir.

2 Q So that the police officer could let you go.

3 A Yes, sir.

4 Q Now, I'm going to ask you some questions about August 13,
5 2018, 15 days after you tried to kill Fresh. Do you
6 understand?

7 A Yes, sir.

8 Q You were on post-release supervision.

9 A Yes, sir.

10 Q For the assault charge.

11 A Yes, sir.

12 Q The charge you pled guilty to in front of Judge Murphy in
13 Brooklyn Supreme Court.

14 A I don't remember the name but yes, for the shooting in
15 2010, yes.

16 Q Right. The shooting in 2010. Right?

17 A Yes.

18 Q The one that you did five years for, right?

19 A Yes, sir.

20 Q And you know that you're not supposed to get in trouble
21 when you got released from jail, right?

22 A Yes, sir.

23 Q So you pled guilty to an attempted assault in the first
24 degree on March 6, 2012. Do you remember that?

25 THE COURT: This is before Judge Murphy?

Warren - cross - Guadagnino

700

1 MR. GUADAGNINO: Yes, Judge Martin Murphy.

2 A Yes.

3 Q Right?

4 A Yes, I copped out to it.

5 Q Do you remember the judge? Tall judge?

6 A No, I do not, sir.

7 Q And do you remember you went to 320 Jay Street in
8 Brooklyn?

9 A Yes, that was parole, if I'm not mistaken. I'm not sure
10 where that's at.

11 Q Do you remember Part 40 in Brooklyn Supreme Court on the
12 fourth floor?

13 A Supreme Court?

14 Q Right.

15 A I remember Supreme Court. I don't remember the court
16 door or anything like that.

17 Q So that was the case that you pled guilty to and you got
18 five years in jail.

19 A Okay.

20 Q And you got five years post-release supervision.

21 A Yes, sir.

22 Q And that's like being on parole.

23 A Yes, sir.

24 Q You're not supposed to do any crimes.

25 A Yes, sir.

Warren - cross - Guadagnino

701

1 Q You're supposed to behave yourself.

2 A Yes, sir.

3 Q You're supposed to follow the law.

4 A Yes, sir.

5 Q You're supposed to report to your parole officer.

6 A Yes, sir.

7 Q You're supposed to behave.

8 A Yes, sir.

9 Q You weren't doing that.

10 A No, I was not.

11 Q You were doing worse than what you pled guilty to.

12 A I wouldn't say worse but I wasn't doing what I was
13 supposed to.

14 Q You pled guilty to assault. You shot someone in the leg.
15 Right?

16 A Yes, sir.

17 Q And now you're committing attempted murders paralyzing
18 people. Would that be worse?

19 A Yes, but --

20 Q Okay.

21 A That's not what you just said.

22 Q You then didn't want to have your parole violated, right?

23 A Yes, sir.

24 Q But on August the 13th, 15 days after you're trying to
25 kill Fresh, you were violated by the New York State parole

Warren - cross - Guadagnino

702

1 officer.

2 A Yes, I was.

3 Q And you had a cell phone on you, right?

4 A Yes, I was -- yes, I did.

5 Q And they kept that cell phone.

6 A Yes, they did.

7 THE COURT: "They" being?

8 MR. GUADAGNINO: "They" being the parole officer.

9 A Yes.

10 Q Parole seized your phone.

11 A Yes, they did.

12 Q The phone that was seized was 929-330-0289.

13 A I don't remember what number I had at the time but ...

14 Q But you agree --

15 A That's one of my numbers, yes.

16 Q And you agree that was your phone?

17 A Yes.

18 Q Okay. I'm going to ask you now some questions about
19 October 9, 2019, about one year and three months after you
20 tried to kill Fresh.

21 A Yes, sir.

22 Q About a year and three months later, right?

23 A Yes, sir.

24 Q You're still on parole.

25 A Yes, sir.

Warren - cross - Guadagnino

703

1 Q This time you got arrested for a parole violation, right?

2 A Yes, sir.

3 Q And you were kept at the 75th Precinct in East New York.

4 A They did take me there, yes, sir.

5 Q Right? You were in a holding cell.

6 A Yes, sir.

7 Q At the 75th Precinct.

8 A Yes.

9 Q Do you remember Detective Nicoletta?

10 A In, I do not.

11 Q You don't remember Detective Nicoletta?

12 A I know him by a different name. I know him by Scrappy.

13 I knew him since I was young.

14 Q Okay. Because you've had contact with him.

15 A Yes, I did.

16 Q A lot of police contact.

17 A I wouldn't say a lot. He was just very active in my
18 neighborhood.

19 Q Active in your neighborhood?

20 A Yes. That was one of the most, one of the popular police
21 that used to hop out on us if we was on the block and stuff so
22 this is why I know Scrappy.

23 Q So you knew Scrappy, Detective Nicoletta, from East New
24 York?

25 A Yes, sir.

Warren - cross - Guadagnino

704

1 Q And he went to see you.

2 A Yes, sir.

3 Q And also FBI Agent Steve Schiliro.

4 A Yes, sir.

5 Q Do you know FBI Agent Schiliro?

6 A Yes, I do.

7 Q He also went to go see you at the 75th Precinct.

8 A Yes, that's true.

9 Q And both the FBI agent and the NYPD detective met you at
10 the holding cell.

11 A No, sir. Scrappy, the detective, he had met me at the
12 holding cell, took me out and brought me upstairs where I met
13 the agent who was already in the room sitting there.

14 Q They wanted to talk to you.

15 A Yes, they did.

16 Q They showed you some text messages.

17 A Yes, they did.

18 Q Text messages from the phone that was taken from you from
19 parole.

20 A Yes, sir.

21 Q That phone that was taken from you on August 13, 2018,
22 right?

23 A Yes, sir.

24 Q Fifteen days after you're trying to kill Fresh, right?

25 A Yes, sir.

Warren - cross - Guadagnino

705

1 Q Those text messages that they showed you involved the
2 murder.

3 A I don't know what involved the murder. You mean -- they
4 were just text messages that they were showing me about a
5 shooting, about the shooting, things about the shooting.

6 Q About the shooting of Fresh.

7 A I don't know about any murders.

8 Q About -- you tried to kill Fresh so the attempted murder
9 of Fresh, right?

10 A Yeah. Attempted murder and murder is two different
11 things. I just want to make sure it's clear.

12 Q Okay. So the text messages were from July the 24th,
13 2018, about four days before you tried to kill Fresh.

14 A We went through a lot of messages today. I'm not sure
15 which one you're speaking of.

16 Q I'm talking about the ones from July 24, 2018.

17 MR. GUADAGNINO: 3500JW-5A for the witness.

18 THE COURT: Witness only?

19 MR. GUADAGNINO: Yes, and the government and
20 Your Honor, of course.

21 Q Do you see the text messages?

22 A Yeah, kinda.

23 Q It's there?

24 A Yes, it's a photo. It's turned around.

25 Q Do you see the text messages?

Warren - cross - Guadagnino

706

1 A Yes, I do now.

2 Q Okay. Do you see the first text message --

3 MR. GALEOTTI: Objection, it's not in evidence.

4 THE COURT: Are you going to, are you using this to
5 refresh his recollection?

6 MR. GUADAGNINO: Yes. Yes.

7 Q Can you use it to refresh your recollection?

8 A Yes.

9 Q Don't tell us what it says but tell me when your
10 recollection is refreshed.

11 A I remember now. It just say copy, and there's a picture
12 of Fresh.

13 Q Okay. And you were texting the, you were texting Phaze.

14 A Yes, sir.

15 Q Phaze is also known as Andrew Campbell.

16 A Now I know, yes.

17 Q Now you know who he is.

18 A Yes, sir.

19 Q But you knew him for a while.

20 A I wouldn't say a while but I knew him because of E.A.M.,
21 yes.

22 Q Well, you knew him that day, you knew him July 24, 2018,
23 right?

24 A Yes, sir.

25 Q Otherwise, you wouldn't be communicating with him, right?

Warren - cross - Guadagnino

707

1 A Yes, he was a part of communication. He had some status
2 in Elite Assassins Millas.

3 Q But you knew who he was.

4 A Yes, sir.

5 Q Right? And you're saying that he was in the gang, right?

6 A Yes, sir.

7 Q And you're saying that on July 24th, you were texting
8 with him.

9 A Yes, I was.

10 Q And these are the texts that the FBI and the NYPD
11 detective showed you, right?

12 A No. They did not show me that specifically, no. I don't
13 remember which text they showed me that day but I don't
14 remember any names or anything being on these texts for me to
15 indicate that these were the texts that they showed me.

16 Q Do you recall that they spoke to you about text messages?

17 A Yes. I remember them showing me the gun that they showed
18 me. I think they thought the gun that was in the picture was
19 a picture of the gun that I used. I remember them showing me
20 still shots of my car and of me, but I don't remember which
21 texts, per se, they showed me.

22 Q Do you remember texting on June 24th -- withdrawn.

23 On July 24th, four days before you tried to kill
24 Fresh, you were texting with Phaze.

25 A Yes.

Warren - cross - Guadagnino

708

1 Q You were texting with Phaze who now you know is Andrew
2 Campbell.

3 A Yes, sir.

4 Q And you texted Phaze regarding looking for Fresh.

5 A Phaze texted me.

6 Q Phaze texted you a picture of Fresh.

7 A Yes, and asked me --

8 Q And he asked you if the picture was of Fresh.

9 A Yes, sir.

10 Q And you said yes.

11 A Yes, sir.

12 Q You said that the picture was of Fresh.

13 A Yes, sir.

14 Q Andrew Campbell said or Phaze told you he put the word
15 out.

16 A Yes, sir.

17 Q Meaning he was going to keep his eyes open for Fresh.

18 A Yes, sir.

19 Q Because he knew you wanted to kill him.

20 A I don't know about if he knew I want to kill him because
21 before this, I don't even know how Phaze even knew about what
22 happened with Fresh. So he hit me up out of the blue with a
23 picture. When he hit up out of the blue, I figured, okay, now
24 this is circulating in, inside E.A.M. and I answered to his
25 text.

Warren - cross - Guadagnino

709

1 Q So why would he text you if he didn't know anything about
2 this?

3 A I didn't say he didn't know. I said I didn't know he
4 knew until he text me that picture. Me seeing him text that
5 picture let me know that he knew what was going on. So when
6 he says, Is this the guy, I responded back, yes, this is the
7 guy.

8 Q And you knew that that was Fresh, the guy that you wanted
9 to kill.

10 A Yes, sir.

11 Q And he so happened to text you a picture of the guy you
12 wanted to kill.

13 A Yes. And if I didn't talk to him, that means someone
14 else talked to him, someone else sent him the picture because
15 I never talked to him before that.

16 Q So for whatever reason out of the blue he sent that
17 picture to you.

18 A Yes, sir.

19 Q You, the guy who wanted to kill the guy in the picture.

20 A Yes.

21 Q And he said Fresh has to die, not just get hurt.

22 A He did not say specifically Fresh had to die. He said
23 that I'm going to make sure that Fresh not just get beat up or
24 more seriously than beat up. He didn't say anything about
25 die.

Warren - cross - Guadagnino

710

1 Q Fresh -- Phaze said to you, I'm putting the word out --

2 MR. GALEOTTI: Objection.

3 THE COURT: This is not in evidence.

4 MR. GUADAGNINO: Okay.

5 THE COURT: So you have to either admit it or, you
6 know, you can't read from documents not in evidence, sir.

7 MR. GUADAGNINO: Okay. At this time, I guess I'd
8 like to have this document marked as Defense Exhibit A for
9 identification.

10 THE COURT: Can you tell us what it is? 3500 --

11 MR. GUADAGNINO: 3500JW-5A, Your Honor.

12 MR. GALEOTTI: If I may, Your Honor, we can pull it
13 up. We have it as Government Exhibit 1023.

14 MR. GUADAGNINO: Yes.

15 THE COURT: Is it in evidence?

16 MR. GALEOTTI: It's not in evidence but we have no
17 objection.

18 THE COURT: So do you want to use -- what
19 designation do you want on this, Mr. Guadagnino?

20 MR. GUADAGNINO: I would like the -- well, I'd like
21 -- actually, is it possible to have the whole document go in?

22 MR. GALEOTTI: We have no objection.

23 THE COURT: Okay. So Defense Exhibit A is
24 3500JW-5A, also known as what's marked as Government
25 Exhibit 1023.

Warren - cross - Guadagnino

711

1 MR. SIEGEL: Your Honor --

2 THE COURT: You want the whole thing in?

3 MR. GUADAGNINO: Yes.

4 MR. SIEGEL: Just to be clear, the 3500 version --
5 there's different formatting. So Government Exhibit 1023 is
6 probably an easier to read format as opposed to the 3500.

7 THE COURT: Is that all right with you?

8 MR. GUADAGNINO: That's fine with me, Your Honor.

9 THE COURT: So Defense Exhibit A, also marked as
10 Government Exhibit 1023, is admitted.

11 (Defendant's Exhibit A so marked.)

12 Q So you see Defense Exhibit A?

13 A Yes, sir.

14 Q Okay. Phaze --

15 A It would be the messages after this.

16 Q Yes. 7/24.

17 THE COURT: Page 3, 7/24, message number -- which
18 one?

19 MR. GUADAGNINO: It's actually, it looks like it's
20 7/23, the date is 7/23/2018.

21 THE WITNESS: Yes, I see it.

22 MR. GUADAGNINO: Can we go back to 24, please?

23 THE COURT: Go back to the date of July 24th or
24 page 24?

25 MR. GUADAGNINO: No, column 24.

Warren - cross - Guadagnino

712

1 THE COURT: Message number 24?

2 MR. GUADAGNINO: Yes, please.

3 THE COURT: Okay. Message 24 on page 2.

4 MR. GUADAGNINO: Okay. I'm sorry. Message 25,
5 Your Honor.

6 THE WITNESS: You want message 27?

7 MR. GUADAGNINO: Message 25, please, to message 32.

8 Q Okay. You see what's in evidence as Defense Exhibit A,
9 correct?

10 A Yes, sir.

11 Q So Phaze texted you approximately five days before you
12 tried to murder Fresh. Right?

13 A Yes, sir.

14 Q And Phaze asked you on column 25, what does that say?

15 A This thing right here?

16 Q Right. And there's a picture right there of Fresh.
17 Correct?

18 A Yes.

19 Q And you said, "Yea Brody." What does "Yea Brody" mean?

20 A I'm telling him, I'm confirming that's a picture of him.

21 Q Okay. And then he texted you: "Kopy. I put the word
22 out. Imma keep my eyes open for son but I'm letting you know
23 like I put the word out that he gotta go. Not that he just
24 gotta get smoked."

25 A Yes, sir.

Warren - cross - Guadagnino

713

1 Q That means that he's got to get killed.

2 A Yes, it mean he's got to get killed but you said he said
3 he's got to die. He did not say die.

4 Q He said, in this lingo --

5 A In terms --

6 Q What does it --

7 A It terms, it means that he had to die.

8 Q He had to die. So "he gotta go" means he has to be
9 killed, he has to die, right?

10 A Yes, sir.

11 Q "He's gotta get smoked" means he's got to get hurt, not
12 die.

13 A No. You smoke anyway. Depends on who you're talking to
14 because we use "smoke" for someone dying too.

15 Q So here, the message was he's got to get killed.

16 A Yes, sir.

17 Q And then you texted him back, "Aiight Brody."

18 A "Aiight Brody."

19 Q And that meant, Yes, I'm confirming he has to get killed.

20 A Yes, sir.

21 Q Right?

22 And then you said, "No hot phone shit."

23 A Yes, sir.

24 Q Because you didn't want to get caught.

25 A Of course.

Warren - cross - Guadagnino

714

1 Q You don't want the police looking at this.

2 A No, sir.

3 Q Because you want to get away with what you're doing.

4 A Yes, sir.

5 Q You want to get it done and go undetected.

6 A Yes, sir.

7 Q Right?

8 A Yes, sir.

9 Q You want to be sneaky about it, right?

10 A Yes, sir.

11 Q And then he said, "Nah, this the last time I'm bringing
12 his up over the phone." Remember that?

13 A Yes, sir.

14 Q Because you wanted him to understand no more talking
15 about this on the phone.

16 A Yes, sir.

17 Q I don't want to get caught.

18 A Yes, sir.

19 Q We talk in person. That's what he said to you, right?

20 Line 31.

21 A Yes, sir.

22 Q And you said "DOA" which means "okay."

23 A Yes, sir.

24 Q Besides these text messages, the FBI agent and the New
25 York City police detective showed you a video.

Warren - cross - Guadagnino

715

1 A They showed me a video when -- are you talking about when
2 they did --

3 Q At the 75th Precinct.

4 A No, they did not.

5 Q They told you they had a video.

6 A They told me they had a video and showed me still shots.

7 Q Yes. Of --

8 A Of that time.

9 Q Of you killing Fresh.

10 A No. They had a picture of me standing there with a
11 phone. There's no video of me killing Fresh.

12 Q There's no video -- your testimony is there's no video
13 surveillance of a man, you in a hoodie trying to kill Fresh?

14 A Yes, I have never seen a video of me killing Fresh. I
15 seen a man in a video on my own terms, on my own time on
16 Twitter. 75th played a video of a man walking back and forth
17 with a hoodie which I knew was me but no video of me actually
18 shooting with a gun at Fresh.

19 Q But that was you in the video waiting to kill Fresh?

20 A Yes, that's two different things, sir.

21 Q At that time, you knew you were caught.

22 A No, not necessarily.

23 Q You thought that you were going to get away with it.

24 A No, not necessarily neither. I was afraid. I didn't
25 know what was going on.

Warren - cross - Guadagnino

716

1 Q Right. But you now were -- it was brought to your
2 attention that the detectives and the FBI were onto you for
3 the attempted murder of Fresh.

4 A Yes, sir.

5 Q Right? Now you had the FBI on you.

6 A Yes, sir.

7 Q Because you met the FBI agent.

8 A I knew before that time I met the FBI agent that the
9 agents is on me. The car that Vito or Scrappy showed me
10 showed that this was the FBI. I told everyone when they came
11 to see me, like, this is bigger than just the 75th, this is
12 the FBI.

13 Q And you never experienced this before in your life.

14 A No, I did not.

15 Q Because all your cases were state cases.

16 A Yes, sir.

17 Q Now you got a federal case.

18 A Not at that time, not yet.

19 Q Oh, the FBI, what did that tell you?

20 A That they was questioning and trying to see if they could
21 get a case but not that I had a case.

22 Q But you were worried?

23 A Of course, I was worried. I know what I did.

24 Q You know what you did.

25 A Yes, sir.

Warren - cross - Guadagnino

717

1 Q And you know the consequences. You said it.

2 A Yes, sir.

3 Q Right.

4 I'm going to ask you questions about November
5 the 25th, 2019.

6 A Yes, sir.

7 Q About your first appearance in this federal courthouse,
8 where you were brought in for the attempted murder of Fresh.
9 Do you understand?

10 A Yes, sir.

11 Q You were brought into this courthouse.

12 A Yes.

13 Q You were in custody.

14 A Yes, I was.

15 Q You met your lawyer Richard Levitt.

16 A Yes, sir.

17 Q He went over the charges with you.

18 MR. GALEOTTI: Objection.

19 THE COURT: Yes. Let's not tread into
20 attorney/client.

21 Q Well, you spoke to your lawyer about your charges.

22 MR. GALEOTTI: Objection.

23 THE COURT: Sustained.

24 Q You had a conversation --

25 THE COURT: No communications between an attorney

Warren - cross - Guadagnino

718

1 and a client.

2 Q Okay. You were made aware in court of the charges
3 against you.

4 A Yes, sir.

5 Q You were made aware in court that you were now being
6 charged by way of a complaint.

7 A Yes, sir.

8 Q The first charge that you were made aware of in court was
9 attempted murder in aid of racketeering. Right?

10 A I'm not too sure.

11 Q Would you like to have your recollection refreshed?

12 A I would like it.

13 Q Okay. Would a criminal complaint against you refresh
14 your recollection?

15 A Yes, sir.

16 MR. GUADAGNINO: Your Honor, I don't know, can I
17 have this marked as Defense Exhibit B just for the purposes of
18 identification without introducing it into evidence?

19 THE COURT: Well, why don't you just show it to him
20 first and find out whether it refreshes his recollection.

21 MR. GUADAGNINO: Yes. May I approach?

22 THE COURT: Then if you like, you can have it
23 marked. Yes, you may approach.

24 MR. GUADAGNINO: Thank you.

25 (Continued on next page.)

Warren - cross - Guadagnino

719

1 CROSS-EXAMINATION

2 BY MR. GUADAGNINO: (Continuing)

3 Q Mr. Warren, I'd ask you just to look at it without
4 reading it.

5 A Yes.

6 Q Tell me if your recollection is refreshed as to the
7 charges.

8 THE COURT: He may read it. You just don't want him
9 reading it out loud?

10 MR. GUADAGNINO: Yes.

11 THE COURT: You can read it to yourself, sir.

12 THE WITNESS: Thank you, ma'am.

13 A Yes. This is it right here.

14 Q Okay. Is your recollection refreshed?

15 A Yes, sir.

16 Q Okay. So you were made aware of the charges against you
17 on November 5, 2019?

18 A Yes, sir.

19 Q You were made aware of the first charge of attempted
20 murder in aid of racketeering of Fresh?

21 A Yes, sir.

22 Q And you understood at the time that that was a very
23 serious charge?

24 A Yes, sir.

25 Q Then you were made aware of the second charge against

Warren - cross - Guadagnino

720

1 you, which was possessing a gun, pulling it out and using it
2 to try to kill Fresh?

3 A Yes, sir.

4 Q And you also understood that you could get a life
5 sentence for that?

6 A No, I did not.

7 Q At the time you didn't understand, is it?

8 A No, I do not.

9 Q But you understood it was a serious charge?

10 A Yes. I don't know if you know, but, in this precinct,
11 before anything, I already accepted what I did and told the
12 agent that I did this crime, so.

13 Q Well, you told them when?

14 A When I was arrested for the parole violation.

15 Q And that was when?

16 A This was in October of 2019, when I got locked up for a
17 parole violation.

18 Q And that's when they approached you with the text
19 messages?

20 A Yes.

21 Q And that's when they showed you the video stills?

22 A Yes.

23 Q And that's when you knew that you were caught?

24 A I didn't know I was caught. Like I said, I was just
25 tired. I was tired of fighting. I was tired of lying.

Warren - cross - Guadagnino

721

1 Q You admitted to them that you did that?

2 A Yes, I did.

3 Q And then you admitted to them and you were charged in
4 federal court for those crimes?

5 A Yes, months later.

6 Q And you were scared?

7 A I was scared?

8 Q Right?

9 A No.

10 Q You have been in State prison before?

11 A I wasn't scared. After I told what I did, I was not
12 afraid anymore.

13 Q You were at peace?

14 A Yes, I was.

15 Q And you've done State prison before?

16 A Yes, I did.

17 Q And you did small bids before?

18 A Yes, I did.

19 Q And in 2008, you did a drug program in State Court;
20 right?

21 A Yes.

22 Q In 2009, you did a year in jail for attempted assault in
23 State Court?

24 A Yes.

25 Q And in 2012, you did almost five years for attempted

Warren - cross - Guadagnino

722

1 assault in the first degree?

2 A That I didn't know.

3 Q But you were never faced with a life sentence?

4 A No.

5 Q And you -- if you knew you had a life sentence, you knew
6 you would never be free again?

7 A Of course.

8 Q You could never been with your family?

9 A Of course.

10 Q You could never with your children?

11 A Of course.

12 Q You'd lose your freedom for the rest of your life?

13 A Yes, sir.

14 Q This was the worse charge you had ever faced?

15 A Yes, sir.

16 Q When you were brought in the courtroom, you saw Judge
17 Bloom? Do you remember Judge Bloom?

18 A I remember a judge. I don't remember the name.

19 Q The judge ordered you to remain in custody for your case?

20 A Yes, sir.

21 Q You were transferred to jail?

22 A Yes, sir.

23 Q You were very scared in thinking how terrible this was
24 for you?

25 A No, I was not.

Warren - cross - Guadagnino

723

1 Q You were happy about it?

2 A No, I wasn't happy neither.

3 Q Well, you were worried.

4 A I wasn't worried neither.

5 Q You were at peace?

6 A I was at peace.

7 Q Okay. And you decided that you wanted to cooperate?

8 A Yes, I did.

9 Q Right?

10 You wanted to meet with the Government.

11 A Yes, I did.

12 Q Right?

13 And you made a deal with the Government on March 17,
14 2020.

15 A Yes, I did.

16 Q And you made this deal four months after you were brought
17 to federal court on November 25, 2019?

18 A Yes, sir.

19 Q You met with the prosecutors in this case and the agents
20 about nine times before you made your deal?

21 A Hum, I'm not sure how many times, but I met them a few
22 times, yes.

23 Q A few times. After you made the deal, you met with them
24 continuously, you continued meeting with them; right?

25 A After I made the deal, I seen them for updates, not

Warren - cross - Guadagnino

724

1 proffers, but updates just checking on me, no really -- no
2 questions.

3 The next time I actually did talk to them about the
4 case and stuff is about us going to trial.

5 Q Okay. Now, I'm going to ask you questions about the
6 March 17, 2020 deal that you made with the Government before
7 you testified here in court for the past three days.

8 Do you understand?

9 A Yes, sir.

10 Q Okay. So, on March 17, 2020, you signed the cooperation
11 agreement?

12 A Yes, sir.

13 Q That was the agreement that you made that the Government
14 had put up; correct?

15 A Yes, sir.

16 MR. GUADAGNINO: If we can have that agreement put
17 up. I think it's Government Exhibit.

18 MR. GALEOTTI: 3500-JW-19.

19 MR. GUADAGNINO: Yes, thank you.

20 THE COURT: I'm sorry. Is this in evidence?

21 MR. GALEOTTI: Yes, it is, Your Honor.

22 THE COURT: 3500-JW --

23 MS. NGAI: 19.

24 THE COURT: 19. Thank you.

25 Q Now, the first crime that you pled guilty to is the

Warren - cross - Guadagnino

725

1 racketeering conspiracy; right?

2 A Yes, sir.

3 Q You understand that this is a very serious crime?

4 A Yes, sir.

5 Q You could get up to 20 years for this crime?

6 A Yes, sir.

7 Q You could be fined up to \$250,000?

8 A Yes, sir.

9 Q You could lose your freedom for 20 years?

10 A Yes, sir.

11 Q You could lose your family?

12 A Yes, sir.

13 Q A complete disaster for you?

14 A Yes, it could be.

15 Q The second crime that you pled guilty to was unlawfully
16 possessing a firearm; right?

17 A Yes, sir.

18 Q And that's possessing a gun during your drug dealing;
19 right?

20 A Yes, sir.

21 Q And for this crime, you could spend the rest of your life
22 in prison?

23 A Yes, sir. That's right.

24 Q And you understand that you can get life on this charge
25 after you do the first 20 years on the first charge?

Warren - cross - Guadagnino

726

1 A Yes, sir.

2 Q So life plus 20.

3 A Yes.

4 Q Right?

5 A I don't know if its life plus 20. To be honest with you,
6 I don't know if it would be like that.

7 Q Well, do you remember pleading guilty before the
8 magistrate judge?

9 A Yes, sir.

10 Q And you remember the magistrate judge talking to you
11 about your plea?

12 A Yes, sir.

13 Q And you remember the magistrate judge telling you that
14 you can get consecutive time, one after the other, for all
15 these crimes?

16 A I don't remember that, but, yes, sir.

17 Q Okay. So, again, your life would be over?

18 A Yes, it will.

19 Q No family, no freedom until death?

20 A Yes, sir.

21 Q The third crime that you pled guilty to was murder in aid
22 of racketeering conspiracy; right?

23 A Yes, sir.

24 Q And this was for your role in the death of Michael
25 Tenario?

Warren - cross - Guadagnino

727

1 A I do not know who that is.

2 Q You don't know who that is?

3 A No, I do not.

4 Q Okay. Do you remember being present in court when you
5 took your plea?

6 A Yes, sir.

7 Q Do you remember pleading guilty to these charges on March
8 17, 2020?

9 A Yes, sir.

10 Q Do you remember you appeared before the Honorable Steven
11 M. Gold?

12 A I remember appearing before a judge. I don't remember
13 the name.

14 Q Do you remember the prosecutor, Assistant United States
15 Attorney Gandy was in the room?

16 A Yes, sir.

17 Q Do you remember when you pled guilty to that count?

18 A Yes, I do.

19 Q Do you remember that the prosecutor stated that the count
20 had to do with the death of Nitty?

21 A See, now I understand. I never knew his name. When you
22 said that, I didn't know who you was talking about.

23 Q So his Government name, now you know is Michael Tenario?

24 A Yes, sir.

25 Q You knew him as Nitty?

Warren - cross - Guadagnino

728

1 A Yes, sir.

2 Q And you pled guilty to Count Three, murder in aid of
3 racketeering for your role in the defendant of Michael Tenario
4 who you know as Nitty?

5 A Yes, sir.

6 Q And you know the maximum term of imprisonment you can get
7 for that is ten years?

8 A Yes, sir.

9 Q Right?

10 A Yes, sir.

11 Q So you could get now 20, plus life, plus ten, all after
12 -- one after the other?

13 A Okay. Now I know that. I wasn't aware of that.

14 Q Well, the judge told you on March 17, 2020, Judge Gold,
15 that you could get that. Do you remember that?

16 A I do not remember that, or I didn't understand what he
17 was saying.

18 I would rather say I didn't understand what he was
19 saying when he said that. I thought that it would just be
20 between 15 to life. Probably at that time I thought it was
21 like the State, that if you get charged with multiple charges,
22 even if you found guilty there, they'll add up all these
23 charges and I can get between 15 and life.

24 I didn't know it was multiple like that.

25 Q So you didn't know what you were doing when you pled

Warren - cross - Guadagnino

729

1 guilty?

2 A I knew what I was doing pleading guilty. I didn't know
3 it was separated that way.

4 Q But at the time you didn't ask for clarification?

5 A I asked for clarifications, but I probably overlooked
6 that right there.

7 Q You overlooked you could get consecutive jail time; is
8 that what you're saying?

9 A When I hear life, I'm not thinking about I could do 20,
10 then five, then after that six, then after that life.

11 Life is life.

12 Q Do you recall Judge Gold telling you that the sentences
13 for Counts One through Six can be imposed consecutively?

14 A Once again, I said that. I don't remember.

15 Like I said, hearing life, all I -- all I can -- my
16 mind probably just on life.

17 It doesn't really matter if it was 20, then I do
18 ten, then I do 50.

19 Life at the end is life. That's where my mind was
20 at at the time.

21 Q Do you remember you pled guilty to Count Four of the
22 indictment -- I'm sorry. Withdrawn. -- of the information?

23 A Yes, sir.

24 Q Do you remember?

25 According to your plea agreement, you pled guilty to

Warren - cross - Guadagnino

730

1 another count of murder in aid of racketeering conspiracy.

2 A Yes, sir.

3 Q And you recall that for that count you could get ten
4 years in prison?

5 A Yes, sir.

6 Q And, again, that 10 years runs after the 20, after the
7 life, after the 10, and then another 10?

8 A Okay. I --

9 THE COURT: Sir, I think you're misstating. It
10 doesn't run that way. It could run that.

11 MR. GUADAGNINO: It could run. I apologize.

12 THE COURT: It's up to the judge to decide whether
13 it runs one after the other, which is legal, or in some other
14 way.

15 MR. GUADAGNINO: Right.

16 Q So you understand it could run that way?

17 A Yes, I understand it now.

18 Q And that fourth count that you pled guilty to, murder in
19 aid of racketeering conspiracy was for your role in the death
20 of Premo?

21 A No. Premo is not dead at all. Premo is paralyzed, but
22 that was for the role that I played in Premo being shot and
23 paralyzed.

24 Q Okay. So your role in paralyzing Premo?

25 A Yes, sir.

Warren - cross - Guadagnino

731

1 Q And did you know Premo's Government name to be Marcus
2 Glover?

3 A No, sir.

4 Q But now you no?

5 A Yes, sir.

6 Q And then you pled guilty to the fifth crime of assault in
7 aid of racketeering, right?

8 A Yes, sir.

9 Q And that was for your shooting and paralyzing for life of
10 Fresh?

11 A Yes, sir.

12 Q And that's Kayne Harris?

13 A Yes, sir.

14 Q And for that you understood you could get -- you could
15 get up to 20 years?

16 A Yes, sir.

17 Q And after serving again the first four sentences we
18 talked about, you could get the extra 20?

19 A Yes, sir.

20 Q Okay. Then you pled guilty to the sixth crime; right?

21 A Yes, sir.

22 Q Which was unlawfully shooting with a gun Fresh?

23 A Yes.

24 Q Right?

25 And you understood that you could get another life

Warren - cross - Guadagnino

732

1 sentence?

2 A Yes, sir.

3 Q Right?

4 A Yes.

5 Q On top of the first one in Count Two?

6 A I didn't understand that before. All I hear when I hear
7 all these numbers is life.

8 Q Life is life?

9 A Life is life.

10 Q And you understood you could get life?

11 A Yes, sir.

12 Q As you sit here, you know you could get life?

13 A Yes, sir.

14 Q You're 34 years old?

15 A Yes, I am.

16 Q These sentences, if you got them, would guarantee your
17 death in prison?

18 A Yes, sir.

19 Q You understood what the sentencing guidelines were when
20 you pled guilty; correct?

21 A Yes, sir.

22 Q You understood that your sentencing guidelines were
23 calculated by the Assistant U.S. Attorney at the plea as life?

24 A My sentencing guidelines as in --

25 MR. GALEOTTI: Objection. Form.

Warren - cross - Guadagnino

733

1 THE COURT: There's another way you could ask it.

2 MR. GUADAGNINO: Yes.

3 THE COURT: Please do.

4 Q Do you recall being present at your plea?

5 A At my plea?

6 Q Yes. When you plead guilty.

7 A Yes.

8 Q Do you recall that?

9 A Yes. Yes.

10 Q Do you recall the judge, Judge Gold, asked the Assistant
11 U.S. Attorney if the Government had an idea of what your
12 guidelines could be?

13 A No, I don't remember.

14 Q Do you remember the judge asking the Government has the
15 Government prepared an estimate of the guideline range? Do
16 you remember that?

17 A No. All I remember from that day is the judge saying
18 that no matter if you went with this agreement plea, I do not,
19 hum, have to agree to the 5K -- the 5K letter and you can get
20 up to 15 -- a minimum 15 and up to life. That's what I
21 remember.

22 Q Do you remember at your plea hearing that the estimated
23 guideline range, in light of your plea, was life?

24 MR. GALEOTTI: Objection.

25 A No, I do not remember that.

Warren - cross - Guadagnino

734

1 Q Do you remember you answering that you understood?

2 A I remember the judge saying I could get up to minimum --
3 minimum 15 and life, and I understood that.

4 Q Okay. Would your memory be refreshed by the minutes your
5 plea?

6 A No, it would not.

7 Q You wouldn't be refreshed by what you said under oath
8 during your plea?

9 A No. That would be just me reading a paper that happened
10 that day. I still won't remember.

11 Q Do you remember when you took your plea?

12 A Yes, I remember when I took my plea.

13 Q Do you remember before you took your plea you were sworn
14 under oath to tell the truth?

15 A Yes, sir.

16 Q Do you remember answering all your questions during your
17 plea truthfully?

18 A Yes, sir.

19 Q Do you recall --

20 MR. GALEOTTI: Objection, Your Honor.

21 THE COURT: What's your ground?

22 MR. GALEOTTI: Reading a document not in evidence.

23 THE COURT: I don't think he is reading from the
24 document. He was asking whether he remembers taking an oath,
25 et cetera.

Warren - cross - Guadagnino

735

1 Don't read the substance of the document, all right,
2 sir?

3 MR. GUADAGNINO: I won't.

4 Q Do you remember you took an oath?

5 A Yes, sir.

6 THE COURT: You already asked him that question.
7 Don't ask him again.

8 MR. GUADAGNINO: I won't.

9 THE COURT: Move forward, please.

10 MR. GUADAGNINO: Okay.

11 Q After you took your plea, you knew when you took your
12 plea, the sentences that you could get?

13 A Yes, I knew that.

14 Q And you definitely didn't want or don't want a life
15 sentence?

16 A Of course not.

17 Q You want a very light one?

18 A I want a -- I want -- not necessarily a light one at all.
19 I would like to get help or some leniency for my sentence.

20 Q Well, you want to go home?

21 A Everybody want to go home.

22 Q You want to go home?

23 A Of course I want to go home.

24 Q You want to get out of jail?

25 A Yes, sir.

Warren - cross - Guadagnino

736

1 Q And you want the Government to give you the 5K letter?

2 A Yes, sir.

3 Q And that's why you entered into this agreement?

4 A Yes, sir.

5 Q To get the 5K letter?

6 A Yes, sir.

7 Q And that 5K letter could save you from a life sentence?

8 A Yes, it can.

9 Q Because you know you could get -- you could get very
10 little jail time?

11 A Yes, sir.

12 Q And, again, there's no guarantee?

13 A Yeah. There's no guarantee. No promises have been made.

14 Q There's no guarantee that the Government's going to give
15 you that letter?

16 A Well, hum, it is a guarantee on that. While I would hope
17 and pray that what I signed and what the Government signed is
18 if I tell the truth and I cooperate with the Government that
19 they could give me a 5K letter.

20 Q And that depends on you?

21 A Yes, telling the truth.

22 Q You have to tell the truth?

23 A Yes.

24 Q You have to tell the truth to this Court?

25 A Yes, I do.

Warren - cross - Guadagnino

737

1 Q You have to tell the truth to this jury?

2 A Yes, I do.

3 Q And you want to tell the truth under oath?

4 A Yes, sir. I will tell the truth.

5 Q You want to tell the truth because you want that letter?

6 A Not only because I want that letter, because I don't want
7 to lose the chance of having that letter, so I will tell the
8 truth.

9 Q So you don't want to lose the chance of having that
10 letter, so you will tell the truth?

11 A Yes, sir.

12 Q And your cooperation agreement that you signed requires
13 to you testify at this trial?

14 A Yes, if they need me, yes.

15 Q And the Government is going to determine whether you
16 fully cooperated?

17 A Yes, sir.

18 Q They are the ones who are going to determine to give you
19 the letter if you fully cooperated?

20 A Yes, sir.

21 Q And the Government also determines if you have given
22 substantial assistance --

23 A Yes, sir.

24 Q -- to get the letter?

25 A Yes, sir.

Warren - cross - Guadagnino

738

1 Q And they also determine if you comply with this
2 agreement?

3 A Yes, sir.

4 Q Only if those requirements are met you'll get the letter?

5 A Yes, sir.

6 Q You must be truthful at all times?

7 THE COURT: We have gone over this so many times.

8 Q You have to give accurate information; right?

9 A Yes, sir.

10 Q And accurate testimony?

11 A Yes, sir.

12 Q You would never lie in this court of law under oath?

13 A Not this time.

14 I have before, but not --

15 Q You took an oath --

16 THE COURT: Are you waiting for his answer to finish
17 before you ask your next question?

18 I wish you would because he was answering.

19 MR. GUADAGNINO: Yes.

20 THE COURT: All right. Were you answering, sir?

21 THE WITNESS: Yes, I was.

22 THE COURT: You my finish.

23 A I was saying I have lied under oath, but I would not lie
24 under oath. I know what I'm facing.

25 Q So here you are taking your oath seriously?

Warren - cross - Guadagnino

739

1 A Yes, I am.

2 Q And you met with the Government 14 times and each time
3 you told them the truth --

4 A Yes, sir.

5 Q -- right?

6 Now, I'm going to ask you a question. You know
7 Andrew Campbell, you know Phaze.

8 A Yes, I do.

9 Q You kept in touch with him while you have been
10 incarcerated?

11 A No, I have not.

12 Q Did you ever send a message to him to New Jersey stating
13 that you send your love?

14 A No. He had send his love to me.

15 Q He sent his love to you?

16 A Yes, he have.

17 Q You understand that Andrew Campbell may testify in this
18 case?

19 A Yes, I heard he will.

20 Q So you know he may be a cooperator in this case?

21 A Yes, I heard it from jails, but never by prosecutors.

22 Q And you were in communication with him because he sent
23 his love to you?

24 A I was not in communication with me.

25 One of the things is not to talk to anyone, so I did

Warren - cross - Guadagnino

740

1 not send my love back to him.

2 He heard that I was in the jail that I was in and
3 guys from that jail have talked to people over there and he
4 sent his love through them, but I have not talked to him
5 whatsoever.

6 Q So it's your testimony you never communicated with him?

7 A I have never communicated with him.

8 Q I'm going to ask you about an oath and plea that you took
9 on March 6, 2012?

10 A March the 6th, 2012?

11 Q Yes.

12 A Yes, sir.

13 Q Before Judge Murphy?

14 A Yes, sir.

15 Q On March the 6th, 2012 you went to Brooklyn State Supreme
16 Court here in Brooklyn; right?

17 A Yes.

18 Q And you went before Judge Martin Murphy?

19 A Okay.

20 Q Yes or no?

21 A I don't know the judge name. I went across a judge.

22 Q You were going to take a plea to shooting a security
23 guard, right?

24 A Yes, sir.

25 Q A security guard at the nightclub?

Warren - cross - Guadagnino

741

1 A Yes, sir.

2 Q The clerk in the State Supreme Court asked you to raise
3 your right hand?

4 A Yes, sir.

5 Q And just like you were asked to raise your hand in this
6 court on Monday, do you remember that?

7 A Yes, sir.

8 Q Before you started to testify, do you remember that?

9 A Yes, sir.

10 Q The clerk in Brooklyn asked you do you swear to tell the
11 truth, the whole truth and nothing but truth, so help you God.
12 Do you remember that?

13 A Yes, sir.

14 Q And just like the deputy in this courtroom who asked you
15 on Monday, before you began testifying in this case, if you
16 swore to tell the truth?

17 A Yes, sir.

18 Q Do you remember that?

19 A Yes, sir.

20 Q The clerk in State Supreme Court asked you to state your
21 name?

22 A Yes.

23 Q Do you remember that?

24 A Not necessarily that, but I remember asking questions,
25 sir, yes.

Warren - cross - Guadagnino

742

1 Q Right. You said your name was John Warren; right?

2 A Yes, sir.

3 Q And the judge said to you that he would ask you some
4 questions under oath?

5 A Yes, sir.

6 Q Right?

7 And you remember that, right?

8 A I remember that.

9 Q Okay. The judge told you if you didn't understand
10 anything to stop him?

11 A Yeah.

12 Q Do you remember that?

13 A Yes, sir.

14 Q Okay. And the judge said that if you didn't understand
15 anything, he would explain it to you in greater detail;
16 correct?

17 A Yes, sir.

18 Q The judge asked you if you had an attorney, Mr. Ramsey
19 standing next to you. Do you remember Mr. Ramsey?

20 A Yes, I do.

21 Q Mr. Ramsey was your lawyer in that case?

22 A Yes, he was.

23 Q You said yes?

24 A Yes, sir.

25 Q The judge asked you if you were satisfied with your

Warren - cross - Guadagnino

743

1 lawyer's representation and you said yes?

2 A Yes, sir.

3 Q Under oath, right?

4 A Yes, sir.

5 Q The judge asked you about an incident on July 31, 2010;
6 right?

7 A Yes, sir.

8 Q That was the same type of oath that you took in this
9 courtroom on Monday; correct?

10 A Yes, sir.

11 Q The judge said to you that it is charged that on or about
12 July 31, 2010, in Kings County, with the intent to cause
13 serious physical injury to another person, namely Jason
14 Peters, you attempted to cause such injury by means of a
15 deadly weapon.

16 Do you remember that?

17 A Yes, sir.

18 Q Do you remember Judge Murphy asking you that; correct?

19 A Yes, sir.

20 Q And you said yes; right?

21 A Yes, sir.

22 Q Judge Murphy asked you if it was true that you did that?

23 A Yes.

24 Q That you shot at the security guard. Do you remember
25 that?

Warren - cross - Guadagnino

744

1 A Yes, sir.

2 Q And you said yes?

3 A Yes, sir.

4 Q That was a lie?

5 A Yes, it was.

6 Q You lied in State Court after taking an oath?

7 A Yes, sir.

8 Q You lied to the judge?

9 A Yes, I did.

10 Q That's the same type of oath you took in this courtroom
11 on Monday?

12 A Yes, it is, but different circumstances.

13 Q Well, you lied?

14 A Yes, I did.

15 Q And you admit that you lied?

16 A Yes, I do.

17 Q The judge then asked you, continued to ask you under oath
18 if anybody forced you or promised you anything to get you to
19 take that plea. Do you remember that?

20 A Yes, sir.

21 Q And you said no; right?

22 A Yes, I remember.

23 Q And, again, that was a lie?

24 MR. GALEOTTI: Objection.

25 A No one promised me anything.

Warren - cross - Guadagnino

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1 THE COURT: Sustained. Sustained.

2 Wait. If I sustain, you don't have to answer it.

3 He can rephrase it if he wants.

4 Q You were sentenced to five years in prison?

5 A Yes, sir.

6 Q And that was based on your lie?

7 A Yes.

8 Q You lied to protect someone?

9 A My friends.

10 Q Right. And you lied under oath and did five years for
11 your friend?

12 A Yes, I did.

13 Q How much did they pay you?

14 A Nothing.

15 Q You just did it out of the goodness of your heart?

16 A Yeah, loyalty.

17 Q Five years in prison?

18 A Yes, sir.

19 Q Based on a lie?

20 A Yes, I did.

21 Q And for that you committed the crime of perjury, lying
22 under oath; correct?

23 A If that's the crime that I committed, yes.

24 MR. GUADAGNINO: Thank you. I have no further
25 questions.

Warren - redirect - Galeotti

746

1 THE COURT: All right. How is the jury doing? Do
2 you want a little break before we go back to redirect or do
3 you want to keep going?

4 JUROR: Break.

5 THE COURT: Brief break? Okay. Don't talk about
6 the case. We are going to take a short one.

7 I will dismiss you today at -- between 5:15 and
8 5:30.

9 (Jury exits the courtroom.)

10 THE COURT: All right. Sir, you can step off the
11 stand.

12 THE WITNESS: All right.

13 (Witness steps down.)

14 THE COURT: Ten minutes?

15 MR. GUADAGNINO: Yes.

16 (Recess taken.)

17 (The jury enters the courtroom.)

18 THE COURT: All jurors are present. Please have a
19 seat.

20 Does the Government have some redirect?

21 MR. GALEOTTI: Brief redirect, Your Honor.

22 THE COURT: Okay.

23 REDIRECT EXAMINATION

24 BY MR. GALEOTTI:

25 Q Mr. Warren, you testified that you really want to go

Warren - redirect - Galeotti

747

1 home, right? That's something you want to do?

2 A Yes, sir.

3 Q What happens if you lie in court at any time during your
4 testimony?

5 A I will not get a 5K and I will be facing minimum 15 to
6 life.

7 Q Would your cooperation agreement get torn up?

8 A Yes, it will.

9 Q Mr. Warren, at times between 2006 and 2018, did you
10 sometimes commit crimes without the defendant being physically
11 present?

12 A Yes, sir.

13 Q During that timeframe, 2006 to 2018, was the defendant
14 always a member of E.A.M.?

15 A Yes, sir.

16 Q Did the defendant sometimes commit crimes without you
17 being present?

18 A Yes, sir.

19 Q Were you there when the defendant shot Hex?

20 A No, I was not.

21 Q Were you there when the defendant took a gun out on
22 Montauk Avenue?

23 A No, I was not.

24 Q Were you there every day on Ashford Street when the
25 defendant sold drugs?

Warren - redirect - Galeotti

748

1 A No, I was not.

2 Q Were you there for every day on Van Siclen when the
3 defendant sold drugs there?

4 A No, I was not.

5 MR. GALEOTTI: Can we please pull up Government
6 Exhibit 3500-JW-19, which is in evidence, and go to page 2,
7 please. If we can please blow up Count Three and four.

8 Q Sir, Counts Three and Four, does that say murder in aid
9 of racketeering conspiracy?

10 A Yes, sir.

11 Q Did you plead guilty to that?

12 A Yes, sir.

13 Q Were you asked on cross about someone named Michael
14 Tenario?

15 A No, sir. Not the name.

16 Q Well, were you asked --

17 A On cross? Yes, sir.

18 Q On cross.

19 A Yes, sir.

20 Q Did you come to learn during that cross who Michael
21 Tenario is?

22 A Yes, sir.

23 Q Who is it?

24 A Michael Tenario is Nitty.

25 Q Were you physically present when Nitty was murdered?

Warren - redirect - Galeotti

749

1 A No, sir.

2 MR. GALEOTTI: Count Five, please. Sorry, stay
3 there, Count Four.

4 Q Did you plead guilty to anything to do with Premo?

5 A Yes, sir.

6 Q What did you plead guilty to, sir?

7 A I plead murder in aiding and abetting in racketeering --
8 racketeering -- well, conspiracy of murder, aiding and
9 abetting in racketeering.

10 Q Were you physically present when Tyshawn Corbett shot
11 Premo?

12 A No, I was not.

13 Q Were you there when 40 called the defendant to try to set
14 up Fresh?

15 A No, I was not.

16 Q Mr. Warren, have you told the truth the entirety during
17 your testimony over the last three days?

18 MR. GUADAGNINO: Objection.

19 THE COURT: Overruled.

20 A Yes, I did tell the truth.

21 MR. GALEOTTI: Thank you, sir. No further
22 questions.

23 THE COURT: Any cross?

24 MR. GUADAGNINO: Just briefly, Your Honor.

25 THE COURT: Okay.

Warren - recross - Guadagnino

750

1 RECROSS-EXAMINATION

2 BY MR. GUADAGNINO:

3 Q Mr. Warren, the Government determines if you tell the
4 truth here; right?

5 A The Government -- not necessarily.

6 Q Who determines that?

7 A The judge, the jury and the Government.

8 Q And who's giving you the 5K, the Government, right?

9 A Yes, sir.

10 Q If you're truthful?

11 A Yes, sir.

12 Q If they believe you're truthful?

13 A Yes.

14 Q Because you spoke to them; right?

15 A Yes, sir.

16 Q What did you do to help kill Nitty?

17 A What did I do to help kill Nitty.

18 Q Yes. What did you do?

19 A I looked through a phone and pointed out to Tyshawn who I
20 seen Nitty with.

21 Q Right. So you helped in the process to kill him; right?

22 A Yes, sir.

23 Q What did you do to hurt Premo?

24 A With Premo, Marlo seeing Premo in -- I sat with Marlo and
25 waited for Tyshawn to get a tracking device to put on Premo

Proceedings

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1 car for Tyshawn to kill -- to shoot Premo.

2 Q So you did things in both instances: One to kill Nitty
3 and the other to shoot and hurt Premo?

4 A Yes, sir.

5 MR. GUADAGNINO: Thank you. No further questions.

6 MR. GALEOTTI: Nothing further from the Government,
7 Your Honor. Thank you.

8 THE COURT: All right, sir. You are excused. Thank
9 you for your time.

10 THE WITNESS: Thank you.

11 (Witness excused.)

12 THE COURT: Are you ready to call your next witness?

13 MS. NGAI: Yes, Your Honor. The Government calls
14 Special Agent Stacy Turansky.

15 THE COURT: All right. Ma'am, step to the witness
16 stand, please.

17 THE COURTROOM DEPUTY: Please raise your right hand.
18 (Witness sworn.)

19 THE COURTROOM DEPUTY: Please have a seat. State
20 and spell your full name, please.

21 THE COURT: You can remove your mask if you are more
22 comfortable.

23 THE WITNESS: Thank you.

24 Good afternoon. My name is Stacy Turansky,
25 S-T-A-C-Y, T-U-R-A-N-S-K-Y.

Turansky - direct - Ngai

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1 **STACY TURANSKY,**

2 called as a witness, having been first duly

3 sworn/affirmed was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. NGAI:

6 Q Good afternoon.

7 A Good afternoon.

8 Q Where do you work?

9 A For the FBI.

10 Q What is your title at the FBI?

11 A I'm a special agent.

12 Q Does the FBI stand for Federal Bureau of Investigations?

13 A Yes.

14 Q And what are your duties and responsibility as a special
15 agent at the FBI?

16 A I'm currently assigned to a task force which investigates
17 crimes against children and human trafficking. My job is
18 primarily to investigate crimes within the five boroughs of
19 New York City.

20 Q And how long have you been a special agent?

21 A For six years.

22 Q You mentioned that you are currently assigned to the
23 child exploitation and human trafficking task force; is that
24 right?

25 A Yes.

Turansky - direct - Ngai

753

1 Q Back in 2020, what squad or task force were you assigned
2 to?

3 A In June of 2020, I was assigned to the New York Metro
4 Safe Streets Task Force, which is also the Gang Task Force.

5 Q What did you do on that task force?

6 A We investigated crimes involving violence, drugs, gang
7 activity, and other crimes within the five boroughs of New
8 York City.

9 Q When you were part of this task force, did you learn of
10 an investigation involving Quandel Smothers?

11 A Yes, I did.

12 Q And did you assist in that investigation?

13 A Yes.

14 Q How did you assist?

15 A I was assigned as a team leader for the arrest of Mr.
16 Smothers.

17 Q Were you the lead investigator?

18 A I was not.

19 Q Was the arrest the extent of your involvement in that
20 case?

21 A Yes, to the best of my knowledge, yes.

22 Q Did you, in fact, arrest Quandel Smothers?

23 A Yes.

24 Q When did you do that?

25 A I'm sorry?

Turansky - direct - Ngai

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1 Q When did you do that?

2 A In June of 2020.

3 Q Did you have an arrest warrant?

4 A Yes.

5 Q And what is an arrest warrant?

6 A An arrest warrant is a judicially-authorized document
7 which allows to us legally arrest someone for a crime which we
8 have already brought before a court.

9 Q And do you recall where did you end up arresting Mr.
10 Smothers?

11 A Somewhere in Jamaica, Queens I believe.

12 Q Did you go alone that day?

13 A No.

14 Q And who did you go with?

15 A I was with other agents from the FBI, as well as
16 detectives from the NYPD.

17 Q What happened when you -- where did you -- what happened
18 when you arrived at that location?

19 A We arrived to a location and we pulled up in a car and we
20 actually saw Mr. Smothers walking on the street on the
21 sidewalk.

22 Q Was Mr. Smothers by himself?

23 A He was, yes.

24 Q What, if anything, was he holding in his hand?

25 A He had a cell phone in his hand.

Turansky - direct - Ngai

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1 Q Did you arrest him at that time?

2 A Yes.

3 Q What did you do next?

4 A We took Mr. Smothers into our custody. So we searched
5 him, what he had on. We took his phone from him and we
6 brought him into our vehicle.

7 Q Why did you search him?

8 A We search everybody before we transport them or put them
9 into our vehicle for our safety, and also for their safety and
10 ours, as well as to find -- to see what they have on them for
11 inventory-purposes mostly.

12 Q What did you find when you searched him?

13 A He had cash on him, I recall, the cell phone which he was
14 holding in his hand and I'm not sure if he had any other
15 personal belongings.

16 MS. NGAI: Your Honor, at this time may I approach
17 the witness and hand her a physical exhibit?

18 THE COURT: Yes.

19 Q Agent Turansky, do you recognize that object?

20 A Yes, I do.

21 Q Is that marked as Government Exhibit 71?

22 A Yes, it is.

23 Q What is it?

24 A It is the cell phone that Mr. Smothers had in his hand on
25 the day of his arrest.

Turansky - direct - Ngai

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1 Q How do you recognize it?

2 A I recognize it because at the time we took him into
3 custody, I had it in my care, custody and control, and then I
4 put it into our evidence division into this bag.

5 MS. NGAI: Your Honor, at this time the Government
6 moves to admit Government Exhibit 71.

7 MR. GUADAGNINO: No objection, Your Honor.

8 THE COURT: We admit Government Exhibit 71.

9 (Government's Exhibit 71 received in evidence.)

10 Q Agent Turansky, is there an IMEI number for this device?

11 A There is.

12 Q What is a IMEI number?

13 A It's a unique identifier for a cell phone or an
14 electronic device that identify -- is unique.

15 Q Where is the IMEI number normally located on a phone
16 device?

17 A It depends, but most of the time it is on the SIM card
18 which is located inside of the phone.

19 Q A SIM card for that phone?

20 A Yes, there is.

21 Q Is the IMEI number on that SIM card 358691092381213?

22 A Yes.

23 Q What did you do after the search and arrest of Mr.
24 Smothers?

25 A After we arrested him, we put him into the car, like I

Turansky - direct - Ngai

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1 said, and we transported him to the 75th Precinct of the New
2 York Police Department.

3 Q While you were at the precinct, did you do anything with
4 the device?

5 A I had custody of the device for the entire time.

6 Q Did you voucher the device?

7 A Yes.

8 Q What does it mean to voucher?

9 A For the FBI that MREENS to place it into our evidence,
10 which means I put it into a bag. I write some notes on it,
11 and I put it into our evidence unit who holds it once it's
12 sealed.

13 Q Did you place a phone number while you at the precinct?

14 A Yes, I personally did not, but I witnessed a phone call
15 that --

16 Q Apologies.

17 Did you place a call to a particular phone number?

18 A Yes. My colleague placed a phone call, yes.

19 Q And did you call the number (347) 203-8060 while at the
20 precinct?

21 A Yes.

22 Q What was the purpose of making that call?

23 A That was the phone number that we believed Mr. Smothers
24 was using at the time and the phone call was intended for us
25 to be sure that the phone we had taken from Mr. Smothers was

Turansky - direct - Ngai

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1 that phone number.

2 Q And what happened when you and your partner placed that
3 call?

4 A The phone that we had taken from Mr. Smothers rang.

5 Q Did you also document the items that you recovered from
6 Mr. Smothers in any particular manner?

7 A Yes, I would put them into a report, which is known as a
8 302.

9 Q Did you take photographs of the items?

10 A Yes.

11 MS. NGAI: And showing just the witness, counsel,
12 and the Court what is marked as Government Exhibit 218.

13 Q Agent Turansky, do you recognize this document?

14 A Yes.

15 Q And how do you recognize it?

16 A It is a photograph that I took.

17 Q What is it a photograph of?

18 A It is a photograph of the items that Mr. Smothers had on
19 him when we arrested him.

20 MS. NGAI: At this time, move to admit Government
21 Exhibit 218.

22 THE COURT: Any objection, sir?

23 MR. GUADAGNINO: No objection.

24 THE COURT: We receive Government Exhibit 218.

25 (Government's Exhibit 218 received in evidence.)

Proceedings

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1 MS. NGAI: No further questions.

2 THE COURT: Would you like to cross this witness?

3 MR. GUADAGNINO: No cross, Your Honor. Thank you.

4 THE COURT: All right. Ma'am. Thank you, you are
5 excused.

6 MS. NGAI: At this time, the Government calls
7 Special Agent Kevin Coughlin.

8 THE COURT: All right. Thank you.

9 Sir, step up to the witness stand, please.

10 (Witness takes the witness stand.)

11 THE COURTROOM DEPUTY: Please raise your right hand.

12 (Witness sworn.)

13 THE COURTROOM DEPUTY: Please have a seat. State
14 and spell your full name please.

15 THE WITNESS: My name is Kevin Coughlin.

16 C-O-U-G-H-L-I-N.

17 THE COURT: And first name?

18 THE WITNESS: Kevin. K-E-V-I-N.

19 THE COURT: Thank you.

20 You may proceed.

21 MS. NGAI: Before we begin, the Government wants to
22 note we put on the additional number on to the headboard from
23 the last witness.

24 THE COURT: All right. Thank you.

25

Coughlin - direct - Ngai

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1 **KEVIN COUGHLIN,**

2 called as a witness, having been first duly

3 sworn/affirmed, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. NGAI:

6 Q Mr. Coughlin, where do you work?

7 A I work for the FBI, Federal Bureau of Investigations.

8 Q And what is your title at the FBI?

9 A I'm a supervisory special agent.

10 Q And how long have you worked for the FBI?

11 A Approximately 15 years.

12 Q Are you currently assigned to any particular unit or task
13 force within the agency?

14 A Yes, I'm the supervisor for the FBI Metro Safe Streets
15 Task Force, which is also known as the FBI-NYPD Gang Task
16 Force.

17 Q What are your roles and responsibilities in that
18 position?

19 A So, I oversee roughly 32 personnel on the squad, that
20 includes a number of special agents and NYPD detectives.

21 I oversee gang investigations that cover the Bronx,
22 Manhattan, Brooklyn North, and Staten Island.

23 Then I oversee, besides those investigations,
24 everything to do with like the paperwork that gets submitted
25 in those investigations, so on and so forth.

Coughlin - direct - Ngai

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1 Q Directing your attention to February 25th of 2019, what
2 did you do that day?

3 A So I was part of a surveillance team in Brooklyn, New
4 York, along with other agents and detectives from my squad and
5 other personnel from the NYPD, and on that day we were
6 conducting surveillance to arrest a subject in Brooklyn.

7 Q Did you -- and you mentioned that you were there to
8 arrest a subject. What subject were you planning to arrest?

9 A Qawon Allen.

10 Q Did you have an arrest warrant for Mr. Allen at that
11 time?

12 A Yes, we did.

13 Q And did you, in fact, find Mr. Allen?

14 A Yes. During the surveillance operation, Mr. Allen was
15 spotted on the street, at which time our team moved in and
16 arrested Qawon Allen on the sidewalk.

17 Q Did you or other law enforcement agents searched Mr.
18 Allen at the time of his arrest?

19 A Yes. Mr. Allen was searched incident to his arrest and
20 all of the items that he had on his person, which is standard
21 procedure, were taken from him and seized incident to his
22 arrest.

23 Q And what, if anything, was recovered in connection with
24 Mr. Allen's arrest?

25 A A number of things. I'm not sure it's whatever the

Coughlin - direct - Ngai

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1 person had on their person at the time that they were
2 arrested. In this particular case, it included two cellular
3 telephones.

4 Q And what, if anything, was done with the recovered cell
5 phones?

6 A Those cell phones were seized incident to the arrest and
7 then they were essentially, you know, vouchered or included in
8 the FBI's evidence log, and then they were essentially, you
9 know, handed into evidence and logged in.

10 Q I'm going to hand you what is now marked as -- I'm going
11 to hand you what is now marked as Government Exhibits 709 and
12 708.

13 A Okay.

14 Q Do you recognize these items?

15 A Yes, I do.

16 Q How do you recognize them?

17 A These are the two phones that were seized on Mr. Allen's
18 person on February 25, 2019.

19 I also recognize it because my initials are on the
20 corner of the bag because I've reviewed these items before,
21 before today.

22 MS. NGAI: Your Honor, the Government moves to admit
23 Government Exhibits 708 and 709.

24 MR. GUADAGNINO: No objection.

25 THE COURT: We admit 708 and 709.

Coughlin - direct - Ngai

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1 (Government's Exhibits 708 and 709 received in
2 evidence.)

3 THE COURT: Did you say 2019 or 2018, that you
4 seized these?

5 THE WITNESS: 2019, ma'am.

6 THE COURT: Thank you.

7 Q Do both phones have IMEI numbers?

8 A Yes, they do.

9 Q Did you take photos of those IMEI numbers?

10 A I did.

11 MS. NGAI: Showing just the witness and counsel and
12 the Court what has been marked as Government Exhibits 219 and
13 220.

14 Q Are these the photographs that you took?

15 A They are.

16 Q And are these of the IMEI numbers for the exhibits in
17 your hand?

18 A They are.

19 MS. NGAI: Your Honor, at this time move to admit
20 both Government Exhibit 219 and 220.

21 MR. GUADAGNINO: No objection.

22 THE COURT: We admit Government Exhibits 219 and
23 220.

24 (Government's Exhibits 219 and 220 received in
25 evidence.)

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1 Q Can you please read the IMEI for Government Exhibit 708?

2 A Yes, it is 359407088183318.

3 Q And can you please read the IMEI number for Government
4 Exhibit 709?

5 A Yes, it is 354878094697985.

6 Q Thank you.

7 MS. NGAI: No further questions.

8 (Continued on following page.)

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1 THE COURT: Any cross?

2 MR. GUADAGNINO: No.

3 THE COURT: Thank you, sir. You're excused. Have a
4 nice day.

5 THE WITNESS: Okay.

6 (Witness excused.)

7 THE COURT: Do you have another witness?

8 MS. NGAI: Yes. The government calls Joseph
9 Jacobsen.

10 THE CLERK: Raise your right hand.

11 (The witness, JOSEPH JACOBSEN, was duly
12 sworn/affirmed by the clerk.)

13 THE CLERK: Please have a seat and state and spell
14 your full name, please, for the record.

15 THE WITNESS: Thank you.

16 THE COURT: You may remove your mask if you want to.
17 You don't have to.

18 THE WITNESS: I'll leave it on. Thank you.

19 Good afternoon. My name is Joseph Jacobsen,
20 J-A-C-O-B-S-E-N.

21 THE COURT: J-A-C-O-B-S-E-N?

22 THE WITNESS: Correct.

23 THE COURT: Thank you.

24 (Continued on next page.)
25

Jacobsen - direct - Ngai

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1 DIRECT EXAMINATION

2 BY MS. NGAI:

3 Q Good afternoon.

4 A Afternoon.

5 Q Where do you work?

6 A The New York City Police Department.

7 Q Is that sometimes referred to as the NYPD?

8 A That's correct.

9 Q And what is your job title at the NYPD?

10 A I'm a police officer.

11 Q How long have you been a police officer with the NYPD?

12 A Approximately six years.

13 Q And what are your duties and responsibilities as a police
14 officer?

15 A Currently, I'm a field training officer.

16 Q Are you -- you're a field training officer?

17 A Currently.

18 Q Are you assigned to any particular precinct?

19 A The 75th Precinct.

20 Q And what areas does the 75th Precinct cover?

21 A East New York, Brooklyn.

22 Q And what do you do as a training officer?

23 A I basically take the new recruits out of the academy and
24 I teach them how to be police officers.

25 Q And prior to doing that, what other positions, if any,

CMH

OCR

RDR

FCRR

Jacobsen - direct - Ngai

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1 did you hold at the NYPD?

2 A I worked patrol and I also worked on the public safety
3 teams.

4 Q I'm going to direct you to January 1, 2019 at about
5 6:40 p.m. Were you working at that time?

6 A I was.

7 Q And in what capacity were you working?

8 A I was doing patrol.

9 Q And was that patrol while you were at the 75th Precinct?

10 A That's correct.

11 Q And what does patrol mean?

12 A Normal everyday police work, respond to 911 calls,
13 conduct car stops, help people on the street, respond to aid
14 on jobs, ambulance calls.

15 Q At that night, were you on patrol with anyone else?

16 A Yes.

17 Q Who were you with?

18 A My partner.

19 Q And what is your partner's name?

20 A Officer Varrone. That's V-A-R-R-O-N-E.

21 Q And the first name?

22 A Anthony, common spelling.

23 Q And where were you patrolling?

24 A In the confines of the 75th Precinct.

25 Q Do you remember an approximate area?

Jacobsen - direct - Ngai

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1 A Approximately Pitkin Avenue and Linwood Street.

2 Q And that's in Brooklyn?

3 A Yes.

4 Q Were you patrolling by foot or by car?

5 A We were in a car.

6 Q And was the car marked in any way?

7 A Yes, it was a marked police car.

8 Q What did you see while you and Officer Varrone were on
9 patrol?

10 A A red Maxima with dark window tints and a license plate
11 lamp that was defective.

12 Q And what, if anything, did you do at that time?

13 A We conducted a car stop.

14 Q Did you approach -- after you did a car stop, did you
15 approach the car?

16 A Yes.

17 Q Okay. And who did you see in the car?

18 A The driver of the vehicle.

19 Q And do you know the name of the driver?

20 A I do.

21 Q And what is the name?

22 A Tyshawn Corbett.

23 Q Did you know Tyshawn Corbett before you stopped him?

24 A I did not.

25 Q Did he provide any identifying information that confirmed

Jacobsen - direct - Ngai

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1 his identity?

2 A He did.

3 Q What did he provide?

4 A New York State driver's license.

5 Q With his name on it?

6 A Yes.

7 Q Other than the tinted windows and the license plate that
8 you just talked about, what else did you observe when you
9 approached the car?

10 A The odor of marijuana, I mean, from the cabin of the
11 vehicle.

12 Q And after you smelled the scent of marijuana, what did
13 you do?

14 A I asked Mr. Corbett to step out of the vehicle.

15 Q After he stepped out of the vehicle, what did you do?

16 A Searched the car.

17 Q And what, if anything, did you find?

18 A In the cabin of the vehicle, I found a backpack filled
19 with currency, and just normal everything car stop.

20 Q And when you say the cabin of the car, you mean the front
21 part of the car?

22 A That's correct.

23 Q What did you do next?

24 A We had Mr. Corbett sit back in the driver's seat and we
25 opened the trunk.

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1 Q And what did you find in the trunk?

2 A As we were about to search the trunk, Mr. Corbett exited
3 the vehicle, approached me and my -- excuse me -- my partner,
4 Officer Varrone, grabbed a bag from out of the trunk and fled
5 on foot.

6 Q Did you see where he fled off?

7 A Yes.

8 Q Where did he flee off to?

9 A He went eastbound on Pitkin Avenue, northbound Essex, and
10 then westbound back towards Linwood Street on Glenmore.

11 Q And did you mention that he grabbed a bag from the back
12 of the trunk?

13 A I did.

14 Q What did you do next?

15 A We pursued him on foot.

16 Q And did you eventually find Tyshawn Corbett?

17 A Yes.

18 Q Where was he when you found him?

19 A On the corner in a backyard on Glenmore and Linwood.

20 Q And what did you do when you found him?

21 A We placed him under arrest.

22 Q What about the bag that you saw him grab, what was that?

23 A It was in the approximate area in which we arrested him
24 in.

25 Q And what, if anything, was inside that bag?

Jacobsen - direct - Ngai

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1 A A green leafy substance and a scale.

2 Q What kind of scale was it?

3 A Just a -- like something you would weigh something on,
4 like a handheld scale.

5 MS. NGAI: At this time, may I please approach and
6 show the witness a physical item?

7 THE COURT: Yes.

8 MS. NGAI: I'm also going to hand the witness a pair
9 of scissors.

10 Q Officer, I'm showing you what has been marked as
11 Government Exhibit 722.

12 Officer, do you recognize the item in your hand?

13 A Yes.

14 Q What is it or how do you recognize it?

15 A I vouchered it.

16 Q Okay. And what is it?

17 A This is a scale.

18 Q Is that the scale you recovered that night from
19 Mr. Corbett's car?

20 A Yes.

21 Q Or at the scene of his arrest?

22 A Yes.

23 MS. NGAI: Your Honor, at this time, I move to admit
24 Government Exhibit 722.

25 MR. GUADAGNINO: No objection.

Jacobsen - direct - Ngai

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1 THE COURT: We admit Government's Exhibit 722.

2 (Government Exhibit 722 so marked.)

3 Q Officer, would you please open the bag and show the jury
4 what's in the bag with the scissors?

5 A Sure. Scale. The bowl goes on top of the scale. And
6 sandwich bags that, you know, you put the weed in and put it
7 on the scale.

8 MS. NGAI: Your Honor --

9 Q I mean, Officer Jacobsen, to be clear, you don't actually
10 know what's in --

11 A Glean leafy substance.

12 Q You don't actually know that it's marijuana, correct?

13 A Yes.

14 THE COURT: You mean as he sits here today or at the
15 time of the arrest?

16 MS. NGAI: Either.

17 THE WITNESS: Either.

18 THE COURT: Okay.

19 Q Was any other substance recovered in connection with
20 Tyshawn Corbett's arrest?

21 A Yes.

22 Q What other substance?

23 A There were twists of a white rocky substance also
24 recovered in this arrest.

25 Q What are twists?

Jacobsen - direct - Ngai

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1 A Twists are pretty much a ripped off piece of plastic that
2 will contain the white rocky substance and it will be twisted
3 to a small amount and they sell it like that.

4 Q And you found approximately how many of them?

5 A That I don't recall. Could I look at my notes?

6 Q As you sit here today, do you recall approximately how
7 many twists were recovered in connection with Mr. Corbett's
8 arrest?

9 A That I don't know.

10 Q What, if anything, did you do with the recovered items?

11 A I vouchered them all.

12 Q And what does it mean to voucher an item in NYPD?

13 A So vouchering just as this, everything gets assigned a
14 voucher number and it lists the exact items that are in the
15 bag in numerical order.

16 Q Are things that you recover at the scene of a crime or an
17 arrest scene, are they assigned a unique invoice number?

18 A Yes.

19 Q And what is the purpose of assigning them with a unique
20 invoice number?

21 A That way, you can tell the difference between if it was
22 yours or somebody's else's.

23 Q Was the substance that was recovered from Tyshawn
24 Corbett's arrest, the white rocky substance and the green
25 leafy substance that you talked about, were they assigned an

Jacobsen - direct - Ngai

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1 NYPD invoice number?

2 A They were.

3 Q As you sit here today, do you remember what that invoice
4 was?

5 A No.

6 Q Did you know it at the time that you vouchered those
7 items?

8 A Yes.

9 Q Did you accurately record that number when it was fresh
10 in your head?

11 A Yes.

12 Q And where would you have recorded it?

13 A On the arrest paperwork.

14 MS. NGAI: I'm showing just the witness and counsel
15 and the Court what is marked as Government Exhibit 3500JJ-7B.

16 Q Do you see that invoice number anywhere?

17 A On the screen here.

18 MS. NGAI: Your Honor, permission for the witness to
19 read the invoice number as a past recollection recorded.

20 THE COURT: Any objection, Mr. Guadagnino?

21 MR. GUADAGNINO: No objection, Your Honor.

22 THE COURT: You may read the invoice number, sir.

23 THE WITNESS: Thank you, Judge. It's going to be
24 3001055378.

25 Q Officer Jacobsen, what else was recovered in connection

Jacobsen - direct - Ngai

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1 with Tyshawn Corbett's arrest?

2 A A firearm, a gun.

3 Q Was that at the time of the arrest or was that later at
4 the precinct?

5 A Later at the precinct.

6 Q Did you recover any phone devices at the time of
7 Mr. Corbett's arrest?

8 A Yes.

9 Q Approximately how many phones?

10 A I believe it was four.

11 Q Did you also voucher those phones?

12 A Yes.

13 MS. NGAI: Permission to hand the witness what has
14 been marked as Government Exhibit 705?

15 THE COURT: Granted.

16 Q Officer, do you recognize the item in your hand?

17 A Yes.

18 Q What is it?

19 A It's a cell phone.

20 Q Was this one of the cell phones that was recovered in
21 connection with Tyshawn Corbett's arrest?

22 A It was.

23 Q And how do you know?

24 A So, again, with the assigned voucher number, this was the
25 assigned voucher number for this phone that I vouchered.

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1 MS. NGAI: Your Honor, the government moves to admit
2 Government Exhibit 705.

3 MR. GUADAGNINO: No objection.

4 THE COURT: We admit Government Exhibit 705.

5 (Government Exhibit 705 so marked.)

6 Q Does Government Exhibit 705 have an IMEI number as well?

7 A Yes.

8 Q Is IMEI number on this phone 354839090909915?

9 A That's correct.

10 Q And you're looking at the SIM card right now?

11 A I am.

12 Q What, if anything, did you do with the car that Tyshawn
13 Corbett was driving that night?

14 A Like I said previously, we had taken it back to the
15 precinct.

16 Q And why did you take it back to the precinct?

17 A To safeguard it, obviously, it's his property, but also
18 to conduct an inventory search. Inventory -- I'm sorry.

19 Q Allow me to ask.

20 A Sorry.

21 Q What is an inventory search?

22 A An inventory search is conducted. So after we safeguard
23 all items for the prisoner, we have to account for all his
24 stuff so that we make sure that nothing else is missing from
25 his car.

Jacobsen - direct - Ngai

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1 Q And does that mean that law enforcement searches the car?

2 A Yes.

3 Q And is that just part of the inventory search?

4 A Normal procedure, correct.

5 Q Who performed the search?

6 A I did.

7 Q And what did you find during this search?

8 A Multiple items along with a firearm.

9 Q Where was the firearm?

10 A It was in the hood of the vehicle.

11 Q Was it just displayed like that or was it contained in
12 packaging?

13 A It was contained in packaging.

14 Q What did you do after you found the firearm?

15 A Called evidence collection.

16 Q Is that sometimes referred to as ECT?

17 A That's correct.

18 MS. NGAI: I'm showing just the witness, defense
19 counsel and the Court what has been marked as Government
20 Exhibit 173. And to be efficient, I'll also show Government
21 Exhibit 177 and 180.

22 Q Do you recognize these photos?

23 A Yes.

24 Q What are these photos?

25 A These are photos that, again, ECT took the night of this

Jacobsen - direct - Ngai

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1 arrest.

2 Q Were you present when those photos were taken?

3 A I was.

4 Q Do these photos fairly and accurately reflect the firearm
5 that you saw that night?

6 A Yes.

7 MS. NGAI: Your Honor, at this time, the government
8 moves to admit Government Exhibits 173, 177 and 180.

9 MR. GUADAGNINO: No objection.

10 THE COURT: We admit 173, 177 and 180.

11 (Government Exhibits 173, 177 and 180 so marked.)

12 Q So turning to Government Exhibit 173, what does this
13 photo show?

14 A It shows the vehicle that Tyshawn Corbett was driving.

15 Q And why is the hood of the car up?

16 A In regards to the inventory search.

17 Q Okay. Where was the firearm when you saw it?

18 A It was in the battery, in between the engine and the
19 battery compartment. So you see that red cap on the battery
20 right there?

21 Q Officer Jacobsen, you can actually circle on your screen
22 where you saw the firearm.

23 THE COURT: All right. You can go ahead.

24 A So right in this area here. (Indicating).

25 MS. NGAI: Let the record reflect that the witness

Jacobsen - direct - Ngai

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1 has circled the battery or near the battery under the hood of
2 the car.

3 THE COURT: Did you take this photo, sir?

4 THE WITNESS: No, Judge.

5 THE COURT: Do you know when it was taken?

6 THE WITNESS: The night of the arrest.

7 THE COURT: Okay. Thank you.

8 Q And ECT arrived that same night?

9 A That's correct.

10 MS. NGAI: I'm publishing Government Exhibit 177.

11 If we can just remove the marking. Perfect.

12 Q Officer, what does this photo show?

13 A This shows the bulky object that we saw where I just
14 circled.

15 Q And when you say the bulky object, what is that bulky
16 object?

17 A That is a gun.

18 Q And what is the white thing on top of that?

19 A Like bath hand towels.

20 Q And was this the condition of the firearm as you found
21 it?

22 A That's correct.

23 MS. NGAI: I'm publishing Government Exhibit 180.

24 Q What does this photo show?

25 A The towel, hand towels unwrapped with the gun.

Jacobsen - direct - Ngai

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1 Q Did you unwrap it?

2 A I did not.

3 Q And who unwrapped it?

4 A ECT.

5 Q You were there?

6 A Yes.

7 Q What did you -- what did you do after ECT arrived?

8 A They safeguarded the gun after taking pictures of it and
9 we vouchered it.

10 Q When you say we, who's we?

11 A The police department meaning me.

12 Q Officer, when you voucher a gun, what information do you
13 list on the property voucher?

14 A The same as any voucher, identifying marks.

15 Q Do you know what a serial number -- sorry.

16 Do you know what a serial number for a firearm is?

17 A Yes.

18 Q What is it?

19 A It's a distinct number that is only represented on that
20 firearm.

21 Q And it's a unique number?

22 A That's correct.

23 MS. NGAI: Your Honor, at this time, may I please
24 approach and show the officer a physical item marked as
25 Government Exhibit 724-A.

Jacobsen - voir dire - Guadagnino

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1 THE COURT: Yes.

2 Q Do you see Government Exhibit 724-A?

3 A Yes.

4 Q Do you recognize it?

5 A That I do.

6 Q Okay. And how do you recognize it?

7 A It's the one I vouchered.

8 Q Okay. Great.

9 THE COURT: The one he vouchered following
10 Mr. Corbett's arrest?

11 THE WITNESS: That's correct.

12 Q And that was the night of January 1st of 2019, correct?

13 A Yes.

14 MS. NGAI: At this time, Your Honor, the government
15 moves to admit Government Exhibit 724-A.

16 THE COURT: All right. Do you have any objection?

17 MR. GUADAGNINO: Can I have a voir dire?

18 THE COURT: Okay.

19 VOIR DIRE EXAMINATION

20 BY MR. GUADAGNINO:

21 Q Officer Jacobsen, how did you voucher that weapon?

22 A The same process that we just went over.

23 Q Was there a serial number on the weapon?

24 A On the weapon? No, there's no serial number on the
25 weapon.

Jacobsen - direct - Ngai

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1 Q Would it be fair to say that the serial number is
2 defaced?

3 A That's correct.

4 MR. GUADAGNINO: Okay. Thank you. No further
5 objection.

6 THE COURT: All right.

7 THE WITNESS: Can I make a statement regarding that?

8 THE COURT: I'm sorry. What?

9 THE WITNESS: Can I make a statement regarding that?

10 MS. NGAI: I'll ask.

11 THE COURT: Just for the record, I don't think he --
12 he might have said, "It's the gun." I thought you said, "It's
13 the one." How did you identify or describe --

14 THE WITNESS: It's the gun, this is the gun I
15 vouchered, Judge.

16 THE COURT: Thank you.

17 THE WITNESS: Sorry about that.

18 DIRECT EXAMINATION (Continued)

19 BY MS. NGAI:

20 Q Officer Jacobsen, do you know what a lead serial number
21 is?

22 A Yes.

23 Q What is that?

24 A A lead serial number is something we have in the NYPD,
25 pretty much a small metal tag that you can twist on the items

Jacobsen - direct - Ngai

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1 that don't have an identifying mark or identifying serial
2 number. That way, we make a serial number for it so we can
3 self identify it.

4 Q So just to be clear, when defense counsel was asking you
5 about the serial number for a firearm, is that number placed
6 on by the manufacturer of the gun or by you?

7 A The lead seal or the serial number?

8 Q The serial number.

9 A The serial number is placed on by the manufacturer of the
10 gun.

11 Q And was the firearm that you vouchered that night of
12 Tyshawn Corbett's arrest, did that have a manufacturer's
13 serial number?

14 A It does not.

15 Q And in that instance, what, if anything, do you or other
16 law enforcement officers do to identify that firearm?

17 A We attach a lead seal to it to give it that identifying
18 serial number and/or mark. That way, we can identify it as
19 the one that we have vouchered.

20 Q And feel free to open the package but is there a lead
21 serial number on that firearm?

22 A There is.

23 Q Okay.

24 THE COURT: All right. Just for the record though,
25 Mr. Guadagnino, I believe after your voir dire, you said had

Jacobsen - direct - Ngai

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1 no objection to admitting Government Exhibit 724-A. Is that
2 correct?

3 MR. GUADAGNINO: That's correct, Judge.

4 THE COURT: All right. We will admit it.

5 MS. NGAI: Thank you, Your Honor.

6 (Government Exhibit 724-A so marked.)

7 A Do you still want me to open it?

8 Q Yes, please.

9 A All right.

10 Q And just to be clear for everyone in the courtroom, the
11 firearm has been made safe?

12 A Yes.

13 Q And you cannot actually pull the trigger, correct?

14 A Not at this point, no.

15 Q And there's no ballistics in there?

16 A Correct.

17 Q Can you see the serial number that's on the weapon?

18 A Yes.

19 Q Okay. And what does that serial number say?

20 A So the lead seal number is 956034.

21 Q And does that match the serial, the lead serial number on
22 the invoice of the voucher that you completed?

23 A Yes.

24 MS. NGAI: No further questions.

25 THE COURT: Any cross?

Jacobsen - cross - Guadagnino

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1 MR. GUADAGNINO: Just briefly, Your Honor.

2 THE COURT: Okay.

3 CROSS-EXAMINATION

4 BY MR. GUADAGNINO:

5 Q Good afternoon, Officer Jacobsen.

6 A Good afternoon.

7 Q Now, you recovered Government Exhibit 724-A which you
8 just testified about?

9 A Was that the gun?

10 Q I believe so.

11 A Okay.

12 Q And that's the one that has the NYPD serial number,
13 right?

14 A The lead seal number?

15 Q Yes.

16 A That's correct.

17 Q Okay. And my question is was that gun ever vouchered for
18 DNA testing?

19 A Yes.

20 Q Okay. And do you know the results of the testing?

21 A No.

22 Q Was that gun ever vouchered for fingerprint testing?

23 A Yes.

24 Q And do you know the results of that?

25 A I do not.

Jacobsen - cross - Guadagnino

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1 Q Okay. And also you testified that the gun was recovered
2 under the hood where the engine is, right?

3 A That's correct.

4 Q And it was in a, I think you said it was like in a little
5 hand towel?

6 A That's correct, something you use in a bathroom.

7 Q When you recovered the gun, was it warm?

8 A That I don't recall.

9 Q But it was recovered under the hood of the car where the
10 engine is?

11 A As previously stated.

12 Q Right. And then you testified that you recovered a
13 phone, correct, Exhibit 705?

14 A This phone, yes.

15 Q Right. And my question is was there an IME number to
16 that phone?

17 A A what number, sir?

18 Q An IMEI number.

19 A Yes, that's correct.

20 Q And what was that IMEI number?

21 A Do you want me to repeat it?

22 Q I just -- yes, if you don't mind.

23 A Okay. It's very small print. You've got to give me a
24 second here.

25 Q Sure.

Jacobsen - cross - Guadagnino

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1 A Can I take it out of the package?

2 Q If the Court allows it.

3 THE COURT: Yes, you may.

4 THE WITNESS: Thank you, Judge.

5 A All right. It's going to -- be, I'm trying to get the
6 light here. 354839090909915.

7 Q And, again, this was recovered from Mr. Tyshawn Corbett,
8 correct?

9 A As previously stated.

10 Q Thank you.

11 MR. GUADAGNINO: No further questions.

12 THE COURT: Any redirect?

13 MS. NGAI: Nothing further, Your Honor.

14 THE COURT: All right. Sir, you're excused. Thank
15 you. You may step down.

16 THE WITNESS: Thank you, everyone.

17 THE COURT: Do you want to retrieve your exhibits?

18 MS. NGAI: Yes, Your Honor.

19 THE COURT: Have a nice evening.

20 (Witness excused.)

21 (Continued on next page.)

22

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1 THE COURT: Do you have another witness?

2 MR. GALEOTTI: Your Honor, given the timing, not one
3 that makes sense. What we would do, if Your Honor wants to
4 proceed, is we would put in records at this time.

5 THE COURT: All right. I promised the jury that we
6 would be dismissed at 5:30 so can you put those records in.

7 MR. GALEOTTI: We're happy to proceed tomorrow
8 morning, Your Honor.

9 THE COURT: Okay. Well, they've been very attentive
10 and I'm sure they would love to go home.

11 So I will see you tomorrow at 9 o'clock. Do not
12 talk about the case. All the notebooks stay face down and
13 also binders on your chairs. Please have a safe trip home and
14 thank you again for your service.

15 (Jury exits.)

16 THE COURT: Is there anything I need to address from
17 either party?

18 MR. GALEOTTI: Not from the government, Your Honor.

19 MR. GUADAGNINO: Your Honor, there's one thing
20 Mr. Smothers would object to having the poster with the
21 exhibits up constantly in front of the jury.

22 THE COURT: Well, if it's not necessary for the
23 witness, maybe you can just take it down. I mean there are a
24 lot of names, a lot of faces, and I think it's helpful to the
25 jury to see the names and faces that are being mentioned, but,

1 for example, these last few witnesses probably didn't need to
2 have the board to assist the testimony which would assist the
3 jury.

4 So can we just observe that generally?

5 MR. GALEOTTI: Yes, Your Honor, although I would
6 note the last witness was speaking about Tyshawn Corbett and
7 this is in evidence.

8 THE COURT: I understand. He wasn't called upon to
9 identify him from the photo board, however, right?

10 MR. GALEOTTI: We'll be mindful, Your Honor.

11 THE COURT: Okay.

12 And, Mr. Smothers, if you do not receive a meal,
13 please let me know. You are to be fed tonight and you are to
14 be given a piece of paper to sign that you have received the
15 meal or that you've been offered a meal and have refused it or
16 if you don't receive a meal, let me know. All right, sir?

17 Have a good night. Thank you, Marshals.

18 MR. GALEOTTI: Thank you, Your Honor.

19 THE COURT: Thank you.

20 (Matter adjourned to January 26, 2023 at 9:00 a.m.)
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